TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 1936.

CERTIORARI GRANTED OCTOBER 26, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

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THE ASSOCIATED PRESS, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Petition for enforcement of order of National Labor Relations Board	1	1
Answer to petition	7-a	5
Certificate of National Labor Relations Board	8	8
Proceedings before National Labor Relations Board	11	10
Charge	11	10
Complaint and return of service	15	12
Answer	22	16
Amended notice of hearing, December 30, 1935, with affidavit of service	31	21
Amended notice of hearing, March 20, 1936, with affidavit of service	33	22
Amended notice of hearing, March 21, 1936, with return of service	35	24
Amended notice of hearing, April 2, 1936, with return of service	37	25
Notice to produce file and records with return of service	39	26
Order designating trial examiner	41	27
Intermediate report of trial examiner	42	27
Letters of transmittal and acknowledgment	68	45

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 4, 1936.

	Original	Print
Proceedings before National Labor Relations Board—Continued.		
Certificate of Regional Director	71	47
Statement of evidence	73	48
Appearances	73	48
Colloquy	74	48
Motion to dismiss, etc., Case II-C-28	76	49
Motion to dismiss, etc., Case II-R-3	79	52
Testimony of Lloyd Stratton	82	54
Colloquy	253	181
Testimony of Morris Watson	256	188
R. H. Hippelheuser	325	237
Elinore M. Herrick	335	245
Morris Watson (recalled)	343	251
Colloquy	344	252
Testimony of Carl Randau	352	257
Recital as to Board's Exhibit 1	366	267
Board's Exhibit 2—Proceedings before Labor Relations Board, Case II-R-3	367	267
Certificate	367	267
Petition	369	268
Order for hearing	373	270
Notice of hearing	375	271
Amended notices of hearing	382	275
Order designating Trial Examiner	391	280
Rules and regulations	392	281
Board's Exhibit 3—Order providing for hearing in conjunction with a Proceeding under Section 10 of the National Labor Relations Act, Case No. II-R-3	418	298
Recital as to Board's Exhibits 4 & 5	421	300
Board's Exhibit 6—Telegram	421	300
7—Telegram	421	300
8—Market Schedule on the Day State—East Wires	423	301
Recital as to Board's Exhibits 9 and 10	430	307
Board's Exhibit 11—Bill of complaint and affidavits in action entitled The Associated press v. KVOS, Inc., in the United States District Court for the Western District of Washington	430	307
12—Certified copy of Associated Press trade-mark	481	340
13—Certified copy of strikes and lockouts in the newspaper and periodical printing industry in 1934 and in January to July, inclusive, 1935	483	341
14—Private circular of The Associated Press dated December 31, 1932	485	343

	Original	Print
Proceedings before National Labor Relations Board—Continued.		
Statement of evidence—Continued		
Board's Exhibit 15—Resolution adopted October 11, 1935	489	346
16—Letter dated October 17, 1935, signed by Heywood Broun addressed to The Associated Press	490	347
17—Letter, dated October 22, 1935, signed by Kent Cooper addressed to National Executive Board of the American Newspaper Guild	491	348
18—Letter, dated October 28, 1935, signed by Greenbaum, Wolff & Ernst addressed to The Associated Press	492	349
19—Letter, dated October 28, 1935, signed by Lloyd Stratton addressed to Greenbaum, Wolff & Ernst	498	350
20—Constitution of Newspaper Guild of New York	494	350
21—Constitution and by-laws of American Newspaper Guild	543	388
22—Affidavit of Jackson S. Elliott	578	406
23—Statement as to employees and payroll of A. P.	582	409
23-A to 23-c, inclusive—Financial statements of A. P.	583	409
Respondent's Exhibit 1—Motion to dismiss, Case No. II-C-28	588	412
2—Motion to dismiss, Case No. II-R-3	591	414
Recital as to Guild's Exhibits 1 to 10, inclusive	595	416
Decision	596	416
Statement of case	596	416
Findings of fact	598	419
Conclusions of law	617	432
Order	618	432
Stipulation as to record	621	434
Order as to record	623	434
Opinion, Manton, J.	625	436
Order granting petition	631	445
Clerk's certificate (omitted in printing)	633	
Order allowing certiorari		446

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

OCTOBER TERM, 1935

No. —

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

THE ASSOCIATED PRESS, Respondent

PETITION FOR ENFORCEMENT OF ORDER OF NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A., Sec. 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, The Associated Press. Said proceeding is known upon the records of the Board as case No. C-84, the [fol. 2] title thereof being "In the Matter of The Associated Press and American Newspaper Guild."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times herein mentioned was, a corporation organized under and existing by virtue of the Membership Corporation Law of the State of New York, and has and maintains an office and place of business and transacts business in the City of New York, State of New York.

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of Section 10 (e) of the said National Labor Relations Act.

(3) On the 4th day of December, 1935, a charge having theretofore been duly filed with the Board by the American Newspaper Guild, the Board issued its complaint in said proceeding No. C-84 charging that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was duly served upon respondent. Thereafter, said hearing, noticed for January 8, 1936, was postponed upon due notice to March 31, 1936 and was thereafter postponed upon due notice to April 7, 1936. Thereafter the respondent duly filed its answer.

[fol. 3] (4) Thereafter, on April 7 and 8, 1936, the Board by a Trial Examiner duly held hearings upon the charges stated in said complaint, pursuant to due notice thereof. At said hearings testimony and other evidence with respect to the charges stated in said complaint were adduced by the Board. The respondent appeared at the hearing, by counsel, and filed a motion to dismiss the Board's complaint but offered no evidence.

(5) Thereafter, on April 23, 1936, the Trial Examiner filed with the Regional Director of the National Labor Relations Board for the Second Region an intermediate report, containing findings of fact and recommendations, which was duly served upon respondent.

(6) Thereafter, on the 21st day of May, 1936, the respondent having failed to comply with the recommendations of the Trial Examiner or to file with the Board its exceptions to the intermediate report, and the Board having duly considered the matter and being sufficiently advised in the premises, and being of the opinion upon all the testimony and evidence that the respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to the respondent:

"Order

"On the basis of the findings of fact and conclusions of [fol. 4] law and pursuant to Section 10, subdivision (c)

of the Act, the Board hereby orders that respondent, The Ass-ciated Press, and its officers and agents shall:

"1. Cease and desist:

"(a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; and

"(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and

"(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

[fol. 5] "(a) Offer to Morris Watson immediate and full reinstatement, to his former position, without prejudice to any rights and privileges previously enjoyed by him.

"(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

"(c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting."

(7) The said order is, and at all times since said issuance has been, in full force and effect.

(8) Thereafter, on the 23rd day of May, 1936, said order was served upon said respondent by leaving a copy thereof at the principal office and place of business of the respondent in the City of New York, State of New York.

(9) The respondent on May 25, 1936, advised the Board, through its Regional Attorney, who represented the Board [fol. 6] at the hearing of said proceedings, that it would not comply with the order of the Board heretofore set out in paragraph (5) hereof, and the Board accordingly alleges that respondent will not comply therewith unless and until required so to do by this Court.

Wherefore the Board petitions this Honorable Court for the enforcement of its order of May 21, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made thereupon, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents and representatives to comply therewith.

John M. Carmody, Edwin S. Smith, National Labor Relations Board.

[fol. 7] *Duly sworn to by John M. Carmody. Jurat omitted in printing.*

[fol. 7a] [File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

ANSWER TO PETITION—Filed June 11, 1936

The Associated Press, the respondent herein, by its Solicitors Davis Polk Wardwell Gardiner & Reed, answering the petition of National Labor Relations Board, the petitioner herein, respectfully shows:

1. Respondent admits the allegations of paragraph (1) of the petition.

2. Respondent denies each and every allegation contained in paragraph (2) of the petition.

3. Respondent admits the allegations of paragraph (3) of the petition except that respondent, although admitting the alleged acts of filing, service and notice, denies that any of said acts was duly performed.

[fol. 7b] 4. Respondent admits the allegations of paragraph (4) of the petition except that respondent denies that the alleged hearings were duly held and denies that the alleged notice was duly given.

5. Respondent admits the allegations of paragraph (5) of the petition except that respondent denies that the alleged service upon respondent was duly made.

6. Respondent admits the allegations of paragraph (6) of the petition except that respondent denies that any of the acts of petitioner as therein alleged were authorized by law or justified upon the alleged testimony and evidence.

7. Respondent denies each and every allegation contained in paragraph (7) of the petition.

8. Respondent admits the allegations of paragraph (8) of the petition.

9. Respondent denies each and every allegation of paragraph (9) of the petition except that respondent admits that it advised the petitioner that the respondent refused

and intends to refuse to recognize the authority of the petitioner in the premises, and that the respondent refused and intends to refuse to comply with so much of the said order as directs the respondent to take the affirmative actions therein specified.

Further answering the petition, respondent alleges and avers as follows:

10. The National Labor Relations Act is not in truth and in fact a law, and cannot be enforced, and said pretended statute is void and unconstitutional in its entirety and of no force and effect, and the petitioner is without any right [fol. 7c] or authority in the premises, for the following, among other, reasons, to wit:

(a) Said Act by its language, purpose, and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereto.

(b) Said Act deprives the respondent and the officers and directors of respondent, and the members of respondent, of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereto.

(c) Said Act deprives the respondent and the members of respondent of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereto.

(d) Said Act abridges the freedom of the respondent and its members in the gathering, transmitting and publication of news in newspapers of the members of the respondent, in violation of the Constitution of the United States and of the First Amendment thereto.

(e) Said Act and the authority sought to be exercised thereunder, providing for the awarding of unearned wages to, and the reinstatement of, discharged employees, deprives respondent of its right of trial by jury, in violation of the Constitution of the United States and of the Seventh Amendment thereto.

(f) Said Act embodies an unlawful delegation of powers in that it directs the National Labor Relations Board to determine the appropriate employee unit for the purposes of collective bargaining.

11. The employer-employee relations between respondent and the employees mentioned in the order which petitioner [fol. 7d] seeks to enforce, including in particular the discharged employee Morris Watson, are not matters which directly affect interstate commerce and they are not matters which fall within the regulatory powers of the Congress.

12. This Court has no original or other jurisdiction to entertain the petition herein.

13. The said Morris Watson, at all times herein involved during his employment by respondent, and the other employees of respondent as to whom an investigation has been conducted as set forth in the petition herein, were engaged in the procuring, selection and formulation of intelligence or news and were not engaged in the transmission or distribution of intelligence or news, whether as so selected and formulated or otherwise.

14. In respect of the acts and employment of the employees specified in paragraphs 11 and 13 hereof, including the said Morris Watson, the respondent was not at any of the times herein involved engaged in such commerce as is contemplated by the Constitution of the United States in defining the regulatory and other powers of the Congress.

15. The National Labor Relations Act, whether or not it is unconstitutional and void in its entirety, is, for the reasons set forth in paragraph 10 hereof, unconstitutional, void and of no force and effect in so far as it purports to authorize the exercise of regulatory powers in respect of the employees specified in paragraphs 11 and 13 hereof, including the said Morris Watson.

[fol. 7e] Wherefore respondent prays that the petition herein be dismissed for lack of jurisdiction of this Court to entertain the same, and, in the alternative, for an order and decree denying the petition herein, and for such other relief as may be just.

Davis, Polk, Wardwell, Gardiner & Reed, Solicitors for Respondent, Office & Post Office Address, 15 Broad Street, Borough of Manhattan, New York, New York.

[fol. 7f] *Duly sworn to by Jackson S. Elliott. Jurat omitted in printing.*

[fol. 8] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Secretary duly authorized by Section I of Article VI of the Rules and Regulations of the National Labor Relations Board, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of The Associated Press and American Newspaper Guild," the same being Case No. C-84 before said Board, said transcript including the pleadings, testimony and evidence upon which the Order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

[fol. 9] (1) Copy of charge made by American Newspaper Guild filed with the Board, filed Noevmber 7, 1936.

(2) Copy of Complaint and Notice of Hearing issued by National Labor Relations Board, issued December 4, 1935.

(3) Copy of Return of Service of Complaint and Notice of Hearing.

(4) Copy of Answer of Respondent filed December 18, 1935.

(5) Copy of Amended Notice of Hearing issued December 30, 1935.

(6) Copy of Affidavit of Service of Amended Notice of Hearing.

(7) Copy of Amended Notice of Hearing, issued March 20, 1936.

(8) Copy of affidavit of Service on Amended Notice of Hearing.

(9) Copy of Amended Notice of Hearing, issued March 21, 1936.

(10) Copy of Affidavit of Service on Amended Notice of Hearing.

(11) Copy of Amended Notice of Hearing issued April 2, 1936.

(12) Copy of Affidavit of Service on Amended Notice of Hearing.

[fol. 10] (13) Copy of Notice to Produce Documents and Records, issued March 31, 1936.

(14) Copy of Affidavit of Service on Notice to Produce Documents and Records.

(15) Copy of Order of the National Labor Relations Board designating Charles E. Clark Trial Examiner, issued December 30, 1935.

(16) Copy of Intermediate Report of Trial Examiner filed with Regional Director of National Labor Relations Board for the Second Region, April 24, 1936.

(17) Copy of letter transmitting Intermediate Report to respondent and its counsel, dated April 24, 1936.

(18) Copy of letter from respondent's counsel acknowledging receipt of Intermediate Report, dated April 27, 1936.

(19) Copy of Certificate of Regional Director of National Labor Relations Board for the Second Region transferring case to National Labor Relations Board, dated May 8, 1936.

(20) Stenographic Reports of Hearing before Charles E. Clark, Trial Examiner for National Labor Relations Board, on April 7 and 8, 1936, including all exhibits or copies thereof introduced in evidence.

(21) Copy of Decision, Findings of Fact, and Conclusions of Law, and Order of National Labor Relations Board, dated May 21, 1936.

[fol. 11] In Testimony Whereof, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 22nd day of May, 1936.

Benedict Wolf, Secretary, National Labor Relations Board.

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. C-28

In the Matter of THE ASSOCIATED PRESS, a Corporation,

and

AMERICAN NEWSPAPER GUILD, by the National Executive Board thereof

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that The Asso-
[fol. 12] ciated Press of 383 Madison Avenue, New York, N. Y. (and other addresses in various States), has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that:

1. The Associated Press is and long prior to the date hereof has been engaged in the collection, receipt, formulation and transmission of intelligence in, to and among the several States, the District of Columbia, the territories of the United States, and foreign countries, and in trade, traffic, commerce, transportation and communication in, to and among the several States, the District of Columbia, the territories of the United States, and foreign countries.

2. The Associated Press maintains an office in the City of New York; the work of such office and the work of the editorial employees employed at such office occur in the course and current of the operations described in the paragraph numbered "1" hereof, are an integral part thereof, and constitute commerce in, to and among the several States, the District of Columbia, the territories of the United States and foreign countries.

3. Morris Watson is an editorial employee of The Associated Press employed at the New York office. For approximately seven years Watson has been an editorial employee of The Associated Press, and for approximately five years has been so employed at the New York office.

4. The Associated Press, by its officers and agents, while engaged in the operations described in the paragraph num-

[fol. 13] bered "1" hereof, and on October 18, 1935, discharged Watson, while he was engaged as described in the paragraphs numbered "2" and "3" hereof, and has not reinstated the said Watson since that date.

5. The Associated Press, by its officers and agents, discharged Watson for the reason that he joined and assisted a labor organization known as the American Newspaper Guild (Associated Press Unit of the Newspaper Guild of New York), and engaged in concerted activities with other editorial employees employed at the New York office, and elsewhere, for the purpose of collective bargaining and other mutual aid and protection.

6. By its discharge of Watson, The Associated Press has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, sub-section (1) of said Act.

7. By its discharge of Watson, The Associated Press discriminated and is discriminating in regard to hire and tenure of employment of Watson and discouraged and is discouraging membership in the American Newspaper Guild, and engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of said Act.

[fol. 14] Wherefore, the undersigned respectfully requests that a complaint issue against The Associated Press.

Jonathan Eddy, Executive Secretary of the National Executive Board of the American Newspaper Guild, Office & P. O. Address, 49 West 45th Street, New York City.

Sworn to before me this 7th day of November, 1935. Paula Gross, Notary Public. N. Y. Co. Clk's. No. 217, Reg. No. 7-G-357. Kings Co. Clk's No. 57, Reg. No. 7269. Commission expires March 30, 1937.

[fol. 15] BEFORE NATIONAL LABOR RELATIONS BOARD, SECOND DISTRICT

Case No. II-C-28

[Title omitted]

COMPLAINT

It having been charged by Jonathan Eddy, Executive Secretary of the National Executive Board of the American Newspaper Guild, 49 West 45 Street, New York, New York, that The Associated Press, hereinafter referred to as the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Second District, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The Respondent is and has been, since May 22, 1900, a membership corporation organized under and existing [fol. 16] by virtue of the Laws of the State of New York, having its principal office and place of business in the State of New York, County of New York, City of New York, and is now and has at all the times hereinafter mentioned been engaged at its office in the City of New York, County of New York, State of New York (hereinafter referred to as the New York City Office), in the purchase, collection, receipt, compilation and formulation of intelligence which it purchases, collects, and receives from points and places within and outside the continental United States and in the sale, distribution and transmission of same. The Respondent, as aforesaid, representing a membership of over thirteen hundred morning, evening, and Sunday newspapers, having for its purpose the collection, and distribution of news of the world, is now and at all the times hereinafter mentioned has been engaged at the aforementioned New York City Office and in many offices located at points within and without the continental United States, in connection with the aforesaid purchase, collection, receipt, compilation, formulation, sale, distribution and transmission of intelligence in the operation of leased transmission

wires, other wires, and exclusive exchange contracts, all for the purpose of expeditious clearing and transmission of intelligence between New York City and other States of the United States, the District of Columbia, Territories of the United States, and Dominion of Canada, and foreign countries.

2. The Respondent, in the course and conduct of its business, as aforesaid, causes and has continuously caused substantially all of the intelligence purchased, collected and [fol. 17] received by it and transmitted by it in interstate and foreign commerce, as hereinabove described, to be sold, distributed and transmitted in interstate and foreign commerce from its aforesaid office in the State of New York to its member-subscribers and others, to, into and through States of the United States other than the State of New York and to the District of Columbia, Territories of the United States, Dominion of Canada, and foreign countries.

3. The Respondent, in the course and conduct of its business, as aforesaid, employs and at all the times hereinafter mentioned has employed numerous editorial employees, variously engaged in collecting, receiving, compiling, revising, formulating, selling, distributing, and transmitting immediately on arrival in the State of New York and receipt at its New York City Office, intelligence transmitted in interstate and foreign commerce, as aforesaid, and in formulating, rewriting, editing and transmitting said intelligence all in the course of the expeditious transmission of said intelligence by Respondent to, into and through States of the United States, other than the State of New York, and to the District of Columbia, Territories of the United States, the Dominion of Canada, and foreign countries.

4. The operations of Respondent, more particularly described in paragraphs one, two and three (1, 2 and 3), above, occur in the course and current of commerce among the several states and with foreign nations, are an integral part of the operations of instrumentalities of such com- [fol. 18] merce and constitute commerce among the several states and with foreign nations.

5. The Respondent by its officers and agents on October 18, 1935, while engaged in the operations above described at the New York City Office, did discharge Morris Watson,

an editorial employee, and has at all times since that date refused to reinstate the said Morris Watson.

6. The Respondent, by its officers and agents, discharged and refuses to reinstate said Morris Watson for the reason that said Morris Watson joined and assisted a labor organization known as the American Newspaper Guild and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

7. By its discharge of said Morris Watson and its refusal to reinstate said Morris Watson, as above set forth, the Respondent has interfered with, restrained, and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

8. By its discharge of said Morris Watson and its refusal to reinstate said Morris Watson, as above set forth, the Respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Morris [fol. 19] Watson and did discourage and is discouraging membership in the American Newspaper Guild, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states and in foreign countries, and, on the basis of experience in the aforesaid Association and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board on the fourth day of December, 1935, issues its complaint against The Associated Press, a corporation, Respondent herein.

Notice of Hearing

Please take notice that on the 8th day of January, 1936, at ten o'clock in the forenoon, at the Office of the National Labor Relations Board for the Second District, 45 Broadway, New York City, New York, Room 726, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with [fol. 20] its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint, attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second District, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted by the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this, its Complaint, and Notice of Hearing to be signed by the Regional Director for the Second District on the fourth day of December 1935.

Elinore Morehouse Herrick, Regional Director for the Second District, 45 Broadway, New York, N. Y.

[fol. 21] Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Complaint in the matter of The Associated Press, a corporation, and American Newspaper Guild:

(in person.
(by registered mail.
(by telegraph
V (by leaving copy at principal office or
(place of business, to wit:
(Private Secretary to Mr. Kent
(Cooper

on Kent Cooper, General Manager, of The Associated Press, on December 4, 1935, at four o'clock in the afternoon.

William Meyer, Examiner, National Labor Relations Board, Second Region, 45 Broadway, N. Y. C.

[fol. 22] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND DISTRICT

Case No. II-C-28

[Title omitted]

ANSWER

The Associated Press not waiving but insisting that the National Labor Relations Act is not in truth and fact a law and cannot be enforced by or through the purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director for the Second District, its agents or otherwise; that said pretended statute is unconstitutional, void and of no force and effect for the reasons hereinafter stated; that said National Labor Relations Board is without authority in law to issue the purported complaint and notice of hearing signed by the said Regional Director on the 4th day of December, 1935; that said The Associated Press is not required by law to answer said complaint or to appear before said National Labor Relations Board or the purported Trial Examiner thereof, or otherwise; that said Board is without power [fol. 23] or authority to issue any order or direction to The Associated Press; and The Associated Press protesting against all acts of said Board and its agents in the premises, and reserving any and all manner of exceptions to the said complaint, states as follows in respect thereof:

1. The Associated Press admits that since on or about May 22, 1900, it has been and still is a corporation duly organized and existing under and by virtue of the Membership Corporations Law of the State of New York, having its principal office in the County and City of New York, State of New York, and at the times mentioned has been and is engaged in gathering, obtaining and procuring by its own instrumentalities, by exchanging with its members

and by other appropriate means, any and all kinds of information and intelligence for the use and benefit of its members, and furnishing and supplying the same to its members for publication in the newspapers owned or represented by them, under and subject to the regulations, conditions and limitations prescribed by its By-Laws; that it has been engaged at its office in the City of New York, State of New York, at times in the purchase, collection and receipt of intelligence, and at times in the compilation and formulation of intelligence, which it purchases, collects and receives from points and places within the State of New York, and from points and places within and outside the continental United States, and at times in distributing and transmitting the same to its members within and without the State of New York; that it has over 1350 members owning newspapers published mornings, evenings and Sundays, [fol. 24] and at all the times mentioned in the complaint it has been engaged at its office at New York City and at offices at points within and outside the continental United States in the collection, formulation and transmission of such intelligence and in connection therewith operates leased transmission wires, other wires, and has exclusive exchange contracts, for the purpose of the expeditious obtaining and transmitting of intelligence wholly within the State of New York and within the several states, as well as between the State of New York and other states, districts and territories of the United States and foreign countries; that certain of the intelligence purchased, collected and received by it has been distributed and transmitted from its office in the State of New York to its members within the State of New York and to its members in other states, districts and territories of the United States; that in the course of business it has during the times mentioned employed at its office in the City of New York certain persons engaged in collecting and receiving intelligence, certain persons engaged in compiling, revising, formulating, rewriting and editing intelligence after arrival thereof, and certain persons engaged in causing to be distributed and transmitted and in distributing and transmitting intelligence to other places within the State of New York and to other states, districts and territories of the United States and foreign countries; and except as herein specifically admitted or alleged, it denies the allegations and each of

them contained in paragraphs 1, 2 and 3 of said complaint.

2. The Associated Press denies each and every allegation contained in paragraph 4 of said complaint, except that it [fol. 25] admits that certain of the operations of The Associated Press are wholly within the State of New York and wholly within several of the states of the United States, and certain of its operations are between the several states, districts and territories of the United States and with foreign countries.

3. The Associated Press admits that on or about October 18, 1935, it discharged from its employ one Morris Watson, an editorial employee, and has not since that date reinstated said Watson, and denies each and every other allegation contained in paragraph 5 of said complaint.

4. The Associated Press denies each and every allegation contained in paragraphs 6, 7, 8, 9 and 10 of said complaint.

Further answering the purported complaint, the Associated Press alleges and avers:

5. The Associated Press was organized in 1900 as an association of persons, who owning or representing certain newspapers, united by incorporation into a mutual and cooperative association for the collection and interchange, with greater economy and efficiency, of information and intelligence for publication in the newspapers owned or represented by them. Other owners of newspapers have from time to time since its incorporation been elected to membership in The Associated Press in the manner provided by the By-Laws. The objects and purposes of The Associated Press are to gather, obtain and procure by its [fol. 26] own instrumentality, by exchange with its members, and by other appropriate means, any and all kinds of information and intelligence, telegraphic and otherwise, for the use and benefit of its members, and to furnish and supply the same to its members for publication in the newspapers owned by them, under and subject to such regulations, conditions and limitations as are prescribed by its By-Laws; and for the mutual cooperation, benefit and protection of its members. The Associated Press is not authorized to make a profit nor to make or declare dividends, nor is it engaged in the selling of intelligence. The

cost of collecting, exchanging and transmitting the news service of The Associated Press, as well as other expenses of the Corporation, are apportioned among the members by the Board of Directors thereof, and assessments therefor are levied upon, and paid by, the members.

6. The Associated Press has its own representatives in important capitals and cities who obtain items of news and also has reciprocal arrangements with news agencies in foreign countries for the interchange of news; it has over 1350 members, each owning a newspaper published in various towns and cities in the United States; each of these members, as required by the By-Laws, supplies to The Associated Press the local news gathered by the member for the newspaper owned by him. News thus collected by The Associated Press, which is to be furnished to its members, is rewritten, edited and transmitted by telegraph, telephone, airplane, mail or other appropriate means to its members who publish the same in their newspapers.

[fol. 27] 7. The work of The Associated Press, conducted in this cooperative manner, provides an assurance of accurate and impartial news service to the public through the press. The Associated Press furnishes to its members, and through the press to the public, accurate reports of events which are wholly non-partisan and without distortion or coloring to represent particular views of persons or groups. Over 1350 newspapers of the United States owned by members of The Associated Press receive and publish news received from it and news printed in a large part of the press of the United States is thus furnished by The Associated Press, and in the performance of furnishing such news, it gathers, prepares, disseminates, directs and controls a large amount of the news published in the press of the United States; that to furnish such news The Associated Press employs reporters, writers and editors; that the control and direction of such employment by governmental agencies would limit and restrict The Associated Press in the gathering, preparation and dissemination of news for the press of the United States, and abridge the freedom thereof.

8. That the National Labor Relations Act is void and unconstitutional and of no force and effect for the following, among other, reasons:

(a) Said Act by its language, purpose and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereof.

[fol. 28] (b) Said Act deprives the officers and directors of The Associated Press and its members of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof.

(c) Said Act deprives The Associated Press and its members of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof.

(d) Said Act abridges the freedom of The Associated Press and its members in gathering, transmitting and publishing news in the newspapers owned by members of The Associated Press, in violation of the Constitution of the United States and the First Amendment thereof.

(e) Said Act, and the authority sought to be exercised thereunder providing for the awarding of unearned wages to, and the reinstatement of, discharged employees, deprives The Associated Press of its rights to a trial by jury, in violation of the Constitution of the United States and of the Seventh Amendment thereof.

Further answering the purported complaint, The Associated Press alleges and avers:

9. That the said Morris Watson was employed by The Associated Press on or about December 4, 1928; that said Watson continued in its employ until on or about October [fol. 29] 18, 1935, when he was discharged by The Associated Press in the City of New York, that during the course of said employment said Watson was engaged in obtaining, composing, writing and editing items of news, which items of news after having been written by said Watson, were delivered or sent to another employee of The Associated Press and thereupon the said Watson had no further duty and performed no further act in connection with said items of news; that said Watson was not at any of the times during his employment by The Associated Press, nor was The Associated Press in respect of the acts of said Watson or of his discharge, engaged in interstate commerce within the

meaning of the Constitution of the United States or in any activity which directly affects such commerce, and that said National Labor Relations Act, if valid, does not apply to said Watson's employment or discharge by The Associated Press.

Wherefore, The Associated Press prays that the purported complaint be dismissed.

The Associated Press, by Jackson S. Elliott, Assistant Secretary, 383 Madison Avenue, Borough of Manhattan, New York, N. Y. Davis, Polk, Wardwell, Gardiner & Reed, Attorneys for The Associated Press, 15 Broad Street, New York, N. Y.

[fol. 30] *Duly sworn to by Jackson S. Elliott. Jurat omitted in printing.*

[fol. 31] BEFORE NATIONAL LABOR RELATIONS BOARD

AMENDED NOTICE OF HEARING

Please Take Notice that on the 8th day of January, 1936, at ten o'clock in the forenoon, at Room 1150, United States Customs Court, 201 Varick Street, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the complaint in the matter of The Associated Press, a corporation, and American Newspaper Guild, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Notice of Hearing issued by me under date of December 4, 1935.

In Witness Whereof, the National Labor Relations Board has caused this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region on the 30th day of December, 1935.

Elinore Morehouse Herrick, Regional Director for the Second Region, 45 Broadway, New York, N. Y.

[fol. 32] AFFIDAVIT OF SERVICE

Case No. II-C-28

[Title omitted]

STATE OF NEW YORK,
County of New York, ss:

William Meyer, Examiner, Second Region, being duly sworn, deposes and says that on the 2nd day of January, 1936, he did, as agent for the National Labor Relations Board, serve upon The Associated Press, 383 Madison Avenue, New York, New York, Attention: Mr. Kent Cooper, in the above-entitled matter, by sending on that date to the aforementioned company at the address heretofore indicated, Amended Notice of Hearing, dated December 30, 1935, by postpaid mail registered return receipt requested and deponent further states that he did receive therefrom the United States Post Office (Station P) Receipt for Registered Article No. 353885, dated January 2, 1936, which receipt is pasted here below and made a part hereof.

William Meyer.

Subscribed and sworn to before me this 6th day of April, 1936. Albert L. Fager, Notary Public, New York County No. 8. New York Co. Register's No. 8F-195. My commission expires March 30, 1938. (Seal.)

[fol. 33] BEFORE NATIONAL LABOR RELATIONS BOARD

AMENDED NOTICE OF HEARING

Please Take Notice that, on the 31st day of March, 1936, at ten o'clock in the forenoon, at Room 433, Old Post Office Building, Broadway and Park Row, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint in the matter of The Associated Press, and American Newspaper Guild—Case No. II-C-28—at which time and place you will have the right to appear in person, or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Notice of Hearing issued by me under date of December 4, 1935.

In Witness Whereof, the National Labor Relations Board has cause this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region, on the 20th day of March, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

[fol. 34] Affidavit of Service

Case No. II-C-28

[Title omitted]

State of New York,
County of New York, ss:

Mildred L. Dwyer, Stenographer, Second Region, being duly sworn, deposes and says that on the 20th day of March, 1936 she did, as agent for the National Labor Relations Board, serve upon The Associated Press, 383 Madison Avenue, New York, New York, Attention: Mr. Kent Cooper; and upon Messrs. Davis Polk Wardwell Gardiner and Reed, 15 Broad Street, New York, New York, Attention: John W. Davis, Esq., in the above-entitled matter, by sending on that date to the foregoing-named, at the addresses heretofore mentioned, Amended Notice of Hearing, by postpaid mail special delivery registered return receipt requested; and deponent further states that she did receive therefor from the United States Post Office (Station P, New York, New York), Receipt for Registered Article No. 351619 and No. 351618, respectively, dated March 20, 1936, which receipts and letters of enclosure are attached hereto and marked "Exhibit A" and "Exhibit B."

Mildred L. Dwyer.

Subscribed and sworn to before me this 24th day of March, 1936. Albert L. Fager, Notary Public, New York County No. 6. New York Co. Register's No. 6-F-196. My Commission expires March 30, 1936.

[fol. 35] BEFORE NATIONAL LABOR RELATIONS BOARD

AMENDED NOTICE OF HEARING

Please Take Notice that, on the 7th day of April, 1936, at ten o'clock in the forenoon, at Room 136, New United States Courts Building, Foley Square, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint in the matter of The Associated Press, and American Newspaper Guild—Case No. II-C-28—at which time and place you will have the right to appear in person, or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Amended Notice of Hearing issued by me under date of March 20, 1936.

In Witness Whereof, the National Labor Relations Board has cause this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region, on the 21st day of March, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

[fol. 36] Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Amended Notice of Hearing, dated March 21, 1936, in the matter of The Associated Press and American Newspaper Guild, (Case II-C-28),

(in person
(by registered mail
(by telegraph
XX (by leaving copy at principal office or place of business, to wit:
(15 Broad Street, New York, New York

on Messrs. Davis Polk Wardwell Gardiner & Reed, 15 Broad Street, New York, New York, (Attention: John W. Davis, Esq.), duly authorized attorneys for The Associated Press,

on Saturday, March 21, 1936, at twelve-fifty-five o'clock in the afternoon.

Malvina Kerner, Stenographer, National Labor Relations Board, Second Region.

[fol. 37] Before National Labor Relations Board

Amended Notice of Hearing

Please Take Notice that, on the 7th day of April, 1936, at ten o'clock in the forenoon, at Room 433, Old Post Office Building, Broadway and Park Row, New York, New York, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner, designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint in the matter of The Associated Press, and American Newspaper Guild (Case No. II-C-28), at which time and place you will have the right to appear in person, or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Amended Notice of Hearing issued by me under date of March 21, 1936.

In Witness Whereof, the National Labor Relations Board has caused this substitution and amendment of Amended Notice of Hearing to be signed by the Regional Director for the Second Region, on the second day of April, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

[fol. 38] Return of Service

I hereby certify that, being a person over eighteen years of age I duly served a copy of the within Amended Notice of Hearing in the matter of The Associated Press, a corporation, and American Newspaper Guild, (Case II-C-28),

(in person
(by registered mail
(by telegraph
X (by leaving copy at principal office or place of business, to wit:
(15 Broad Street, New York, N. Y.

on Davis Polk Wardwell Gardiner & Reed, 15 Broad Street, New York, New York, attorneys for The Associated Press, on April 2, 1936, at two-fifteen o'clock in the afternoon.

William Meyer, Examiner, Second Region, National Labor Relations Board.——

[fol. 39] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND DISTRICT

Case No. II-C-28

[Title omitted]

NOTICE TO PRODUCE

Please Take Notice that you are hereby required to produce upon the hearing in this matter, the employment file and records and any other records pertaining to the employment and discharge by The Associated Press of Morris Watson. And in default of the production of the same, secondary evidence of the contents thereof will be offered at the aforementioned proceeding.

Dated this 31st day of March, 1936.

Yours, etc., David A. Moscovitz, Regional Attorney, Second Region.

To Davis, Polk, Wardwell, Gardiner & Reed, Esqs., 15 Broad Street, New York, New York, Solicitors for Defendant.

[fol. 40] Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Notice to Produce in the matter of The Associated Press, a Corporation, and American Newspaper Guild (Case II-C-28),

(in person
(by registered mail
(by telegraph
X (by leaving copy at principal office or place of business, to wit:
(15 Broad Street, New York, New York

on the Reception Clerk at the office of Davis Polk Wardwell Gardiner and Reed, Solicitors for The Associated

Press, 15 Broad Street, New York, New York, on April 1, 1936, at eleven o'clock in the forenoon.

William Meyer, Examiner, National Labor Relations Board, Second Region.

[fol. 41] BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. II-C-28

[Title omitted]

ORDER DESIGNATING TRIAL EXAMINER—December 30, 1935

A charge having been filed in this matter, and it having appeared to the Regional Director of the 2nd Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Charles E. Clark act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

(S.) Jno. M. Carmody, Member. (S.) Edwin S. Smith, Member.

[fol. 42] BEFORE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-C-28

[Title omitted]

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Mrs. Elinore Morehouse Herrick, Regional Director for the Second Region, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated December 4, 1935, against The

Associated Press, the Respondent herein. The complaint and notice of hearing thereon were duly served upon Respondent on December 4, 1935, and January 2, 1936, in accordance with said Rules and Regulations, Series 1, Article V, Section 1.

The Respondent filed its answer dated December 18, 1935, and thereafter instituted proceedings in the District Court of the United States for the Southern District of New York for the enjoining of further proceedings by the Board in this matter. No injunction issuing, further notices of [fol. 43] hearings were duly served upon Respondent on March 20, 1936, March 21, 1936, and April 2, 1936, in accordance with said Rules and Regulations, Series 1, Article V, Section 1.

The complaint alleged:

That the Respondent, a membership corporation organized under the laws of the State of New York and having its principal office in the City, County, and State of New York, the members of which constituted over 1,300 newspapers, and having for its purpose the collection and distribution of the news of the world, employed numerous editorial employees to assist in such business; that its operations were a part of interstate and foreign commerce; that while engaged in these operations at its office in New York City it did discharge Morris Watson, an editorial employee, on October 18, 1935, and has at all times since refused to reinstate him; that its discharge and refusal to reinstate Watson were for the reason that said Watson joined and assisted a labor organization known as the American Newspaper Guild and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection; and that the Respondent has thus violated the rights guaranteed in Section 7 of the National Labor Relations Act, and has engaged in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

The answer of the Respondent to the complaint, while insisting that the National Labor Relations Act was not [fol. 44] in fact a law, but was unconstitutional and void, and that no actions taken pursuant to it were valid:

Admitted and itself alleged its widespread activities in collecting and distributing news in all parts of the world;

further admitted its discharge of Watson and refusal to reinstate him; and denied the remaining allegations of the complaint charging violation of the National Labor Relations Act. And as further answers it specifically and in detail alleged its extensive activities in the collection and interchange of news; the need of accuracy and impartiality in the performance of its business and its reliance upon the skill of its employees in these regards; and that the National Labor Relations Act was unconstitutional and void, being contrary to the 1st, 5th, 7th, and 10th Amendments to the Constitution of the United States, i. e., to the constitutional provisions concerning freedom of the press, trial by jury, deprivation of liberty or property without due process of law, and the reserved powers of the states: and it also alleged the discharge of Morris Watson by it on October 18, 1935; and that he had not been engaged in any operations in interstate commerce; and it concluded with a prayer that the purported complaint be dismissed.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing on April 7 and 8, 1936, at Room 433, Old Post Office Building, Broadway and Park Row, New York, N. Y. The National Labor Board appeared and participated in the hearing, by David Moscovitz, Regional Attorney, Second [fol. 45] Region of the Board, and Petitioner, the American Newspaper Guild, appeared and participated in the hearing through Morris L. Ernst of Greenbaum, Wolff & Ernst. The Respondent appeared specially only, by William C. Cannon of Davis, Polk, Wardwell, Gardiner & Reed, to file a written motion to dismiss (Respondent's Exhibit I) asserting the invalidity of the Act, on the same grounds of unconstitutionality stated in its answer. This motion was denied, and the Respondent withdrew formally from the hearing. Thereafter it took no further part therein except that its counsel was present throughout the hearing and from time to time advised the witness, Stratton, assistant general manager of the Respondent—called as a witness by the Board—as to whether he should respond to questions. Full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the parties was afforded to the parties, and they were granted opportunity to make or file their claims or argu-

ments. No arguments were made and no briefs were presented.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact.

Findings of Fact

1. Respondent is and since its organization in 1900 has been a membership corporation, existing by virtue of the laws of the State of New York and having its principal [fol. 46] office and place of business in the City, County, and State of New York, and has for its purpose and business the collection and distribution of the important news of the world.

2. Respondent's members comprise the owners of over 1,350 newspapers throughout the United States and in Central and South America and Spain; in addition it owns and controls The Associated Press Limited of Great Britain and the Associated Press G. M. B. A. (located in Berlin, Germany), both of which are news photo associations; and it has arrangements for the exchange of news with the Canadian Press and foreign press associations, including the Domei-Tsuchin-Sha of Japan (a consolidation of the former Rengo Agency and the Nippon-Dempe Agency), as well as its own representatives, throughout the world.

3. Respondent is organized as a non-profit association, with voting power in the members, but with power to issue bonds up to the aggregate sum of $500,000 carrying voting power for each $25 but not to exceed $1,000 of registered bonds whereon interest is waived; it had outstanding on December 31, 1935, such bonds in the sum of $235,525, which, being substantially held by the larger newspapers, carried increased voting power to such newspapers to the extent indicated.

4. Respondent's balance sheet for the year 1935 showed assets of $2,697,128.80 and its income was $9,404,213.41, an excess of $141,959.55 over its expenses of $9,262,253.86; said income, outside of interest amounting to $63,374.04, consisted exclusively of assessments levied upon its mem-

[fol. 47] bers according to a formula of assessment which, while adjusted to the type and amount of service received, is based fundamentally upon the plan of distributing the cost of operation among its members in proportion to the population of the community served by a member.
of the world.

5. Respondent's advertised statements contain assertions that "it is the greatest clearing house for news in the world", and that "the revenues reach an annual aggregate of nearly $10,000,000, while the number of words daily received and transmitted at each of the more important offices is over 200,000, or the equivalent of 125 columns of the average newspaper." These statements were not controverted and its extensive operations in all parts of the world were amply demonstrated by all the evidence. It appears to be substantially larger than the other competing press agencies in the United States that are organized as commercial corporations.

6. Respondent has in excess of 1,700 employees and an annual pay roll in excess of $3,000,000. The number of its employees in its New York City office, exclusive of the general office executives, is more than 350, and its pay roll of that office is in excess of $800,000.

7. Respondent's system of collection and distribution of news operates through a series of decentralized units, affording a series of broken down controls in the direct supervision of the news. It is organized into administrative news divisions, and the member newspapers and the [fol. 48] various local offices in the area served by the division report to the headquarters of that division. These divisions, covering the entire United States, are the Eastern, with headquarters in New York City; the Southern, Atlanta, Georgia; the Central, Chicago, Illinois; the Western, San Francisco, California; and the Southwestern, Kansas City, Misouri. In addition it has a special Bureau at Washington, D. C., and a Foreign Service, operating from its New York City office, with offices and staffs and correspondents and "string" (or special story and assignment) correspondents in Africa, Asia, Europe, and Central and South America.

8. As news is collected by reporters, correspondents, or member newspapers, it is forwarded to the division head-

quarters and to regional offices and member newspapers. The usual method of communication is by "leased wires" (or special service by contract with the Western Union Telegraph Company, the American Telephone & Telegraph Company, and the Pacific Telephone & Telegraph Company), although all forms of communications—telephone, messenger, wireless, or mail—are employed. The division headquarters are connected by primary circuits of trunk telegraph wires with subsidiary regional circuits tying in to the primary circuits at key points.

9. As news is received at a division headquarters, it is revised by editorial employees under the direction of supervising editors and then transmitted, to the extent which its interest and importance are determined to merit, to the division members and to the division headquarters [fol. 49] of other divisions; thus news obtained in the City of New York is revised at the New York office and then sent to such of Respondent's members in the Eastern division and of Respondent's other divisions or foreign exchanges as are assumed to be interested in such news.

10. Respondent also through itself or its affiliates conducts extensive operations in the collection of photographs of persons and events which it transmits to and from Europe and among its members and, when the immediate news value thereof is gone, sells to an agency for eventual use in magazines and publications.

11. The editorial work in Respondent's New York City office is divided into various departments to facilitate the speedy and efficient operation of its business. An executive news editor, assisted by supervising editors and editorial employees, has general charge of the revision of the news as it is received from the filing editors in immediate charge of the wires to and from various places; and there are other departments or desks covering Foreign, City, Sports, Financial, News Photo, and Feature Service, as well as a morgue or library for retaining items of potential future value.

12. The filing editors supervise the news as it goes out on trunk or primary circuits and the secondary wires from New York City, including the North wire to New York state and New England and Boston, the South wire to At-

lanta, there breaking into subdivided regional extensions, [fol. 50] the main West wire (with a parallel wire for financial, commodity, and money market news) to Kansas City with trunk wires there to the Pacific Coast and the Southwest, a Metro wire for the newspapers of greater New York (City), and state wires to New York and Pennsylvania. Such editors determine what news, from the vast amount of copy delivered to them, is to be sent on their respective wires, and supervise its rewriting, as they determine desirable for the uses of their respective circuits, and its delivery to teletypewriter operators for transmission over such wires.

13. The operations described in 11 and 12 above are carried on in three daily shifts of employees; the day shift from 8:00 A. M. to 4:00 P. M., the night shift from 4:00 P. M. until midnight, and the early shift from midnight until 8:00 A. M.

14. The operations of the editors and editorial employees as above described require a high decree of skill, for they must be able to determine the news value of items, and to rewrite copy with speed and the utmost accuracy, so that in the case of important news all the work on a particular item may be completed within a few minutes. Thus a story from abroad may be received, rewritten, and sent out over the leased wires in from 12 to 20 minutes, and an unusually important item, such as the death of the King of England, would be sent out in half that time. Less important news is handled in a more leisurely way, but all news becomes valueless for Respondent's purposes very quickly and as soon as it becomes generally known through competing press agencies or otherwise.

[fol. 51] 15. The Feature Service referred to in 11 above supplies to the member newspapers special stories covering particular events, or recurring features, such as articles on sports or scientific events or surveys of the news. These are often sent out as the product of special staff employees, and published over the "by line" or name of the writer; and such assignments are naturally among those most desired and sought after by the editorial employees.

16. The mechanical operations of the transmission of news are conducted by the Respondent's Traffic Department, the employees of which perform no editorial functions and are not classed as editorial employees; and the actual sending of the news by wire is performed by the telegraph companies the use of whose facilities is purchased by the Respondent.

17. At the time of the hearing, of Respondent's employees in New York City approximately 157 were to be classified as editorial employees, including reporters and editors engaged in the preparation or revision of news for transmission and distribution in this country and abroad. This is a definite and separate classification of employees who differ in function from all other employees and is an appropriate bargaining unit under the National Labor Relations Act.

18. Morris Watson began his newspaper career as reporter in 1923 and was first employed by Respondent in December, 1928, when he served as reporter and rewrite editor in Respondent's Chicago office. He fulfilled special assignments such as the senatorial campaign of J. Hamilton [fol. 52] Lewis, the endurance flight of the Hunter brothers, and injunction fight at Youngstown, Ohio, of the stock holders of the Bethlehem Steel Company in the matter of the proposed merger with the Youngstown Sheet and Tube Company. He received much commendation for his work and was recommended for promotion.

19. In 1930, at the request of his former news editor, in Chicago, who had been transferred to Respondent's New York office, Watson was transferred to its New York office, where he served as editorial employee until his discharge by Respondent on October 18, 1935.

20. Watson's services in New York included many special or top notch assignments of great importance, given only to key or ace reporters, which he fulfilled with such credit as to call forth compliments from Respondent's executives and from member newspapers. He was advanced in salary and was generally regarded as an outstanding press employee. Examples of assignments, of which there were many, were the funeral of President Coolidge in Massachusetts, the death of Senator Morrow, the arrival in America of Prime Minister Ramsay MacDonald

of England, and the return of Samuel Insull by extradition from Turkey. On some, such as the latter, he scored noticeable "beats" over rival organizations, and for this he was specially praised.

21. In 1933 the unrest which had developed among editorial employees and reporters of newspapers had become acute, due to lowering of wages generally and the elimina- [fol. 53] tion of various newspapers, notably "The New York World," the sale of which threw many such employees out of work. The remuneration paid such employees was generally lower than that paid less highly [illegible]led workers in the mechanical departments of newspaper service who had been organized in unions, who had had service contracts, and who had suffered less drastic wage cuts.

22. In view of these conditions the American Newspaper Guild was organized to obtain the benefits of unionization for editorial employees and reporters of press associations and newspapers. It comprised a national organization, of which the New York Newspaper Guild was a branch and of which local units were installed in individual newspapers or press associations.

23. Morris Watson was instrumental in organizing the Associated Press Unit of the New York Newspaper Guild in November, 1933, as a part of the American Newspaper Guild and was recognized from the beginning as the outstanding union representative of the press associations. He held office first as chairman of the Associated Press Unit, then as Treasurer of the New York Guild, then as Secretary of that Guild, and as Vice-President for Wiring Services of the American Newspaper Guild, which position he held at the time of his discharge.

24. Prior to his Guild activities, Watson had received, beyond the praise of his work above referred to, no criti- [fol. 54] cism thereof, except in one instance while preparing a special feature story of the Lenz-Culbertson bridge matches he had arranged to write a book on the matter for the Bridge World; this writing was objected to, as against Respondent's policy, and the matter was settled by his withdrawal from any connection with the proposed book.

25. Watson's Guild activities were immediately known to Respondent and objected to by it. In November, 1933, Wat-

son, as a member of a provisional committee of the Guild, urged a press association code at an NRA hearing in Washington, and Respondent, in reporting the hearing as news, stated that Watson did not represent its employees; and about the same time Watson's executive chief was piqued and angry upon being asked for a reference as to Watson by the bonding company with respect to his bond as Treasurer of the Guild.

26. Thereafter on numerous occasions, various of Respondent's executives objected to his Guild activities and held out hopes of a promising future, including promotion to foreign service, if he would give up such activities. Respondent's assistant general manager, Jackson S. Elliott, objected to his attendance at the Guild convention in December, 1933; various executives objected to an open letter he wrote on March 27, 1934, to General Johnson, NRA Administrator, criticizing the failure to establish a press association code, which letter was published in the Magazine "The Editor and Publisher"; and thereafter Elliott talked to him several times to the effect that unionization was not for [fol. 55] newspaper men because of their special character, stating on one occasion that he could not understand why a man of Watson's abilities and talent would be interested in a reporters' union, saying, "You are the best reporter we have"; the General Manager, Kent Cooper, in the summer of 1934 told Watson he could not give him a foreign assignment so long as he was active in the Guild; in December, 1934, on the occasion of another NRA hearing in Washington, D. C., Respondent's executives tried to prevent Watson's going, at first revoking the permission for leave which was ordinarily given under the circumstances, since Watson had arranged with his relief man for his work; and other incidents of like purpose and effect recurringly occurred.

27. In July, 1934, the Associated Press Unit of the Guild adopted a resolution sponsored by Watson, addressed to the American Newspaper Guild, asking the Guild to undertake collective bargaining on behalf of the Unit. Among the points at issue an important one was the securing of a five-day week for editorial employees, instead of the six-day week then in force.

28. Thereafter the Guild sent to Kent Cooper, Respondent's general manager, and to Frank B. Noyes, Respondent's president, formal letters, signed by the executive secretary of the Guild and by Watson, asking for an appointment for the purposes of collective bargaining.

29. Thereafter the executives of the Respondent interviewed the editorial employees individually in respect to [fol. 56] their Guild connections, and strongly objected to such connections, so that membership of the Unit fell off sharply and the collection of dues likewise declined substantially; and as a result the Unit on August 17, 1934, held a meeting and suspended its request for collective bargaining pending the creation and report of a committee from the Unit to discuss the matter with Cooper.

30. On the following day the committee of the Unit, of which Watson was a member, met with Cooper, who declined to bargain collectively, stating that he would quit his job rather than bargain with "an outsider"—referring to the Guild—and intimating that, if Guild activities were given up, the five-day week would be granted. He also stated that he had received many letters from Respondent's members demanding the discharge of Watson and that every time Watson's "by line" was used on a story it brought protest from the members because of his Guild activities.

31. Thereafter, on August 21, 1934, the Unit voted to suspend indefinitely its request for collective bargaining at a meeting, which was largely attended, because Respondent's executives actively worked to induce attendance and in some cases themselves relieved the employees of their duties to that end. The vote was taken against the protest of Watson that the action was a weakening of the Guild, and that the employees would hold the five-day week for only a little while.

32. Thereupon Respondent instituted the five-day week and continued it in force until October 7, 1935.

[fol. 57] 33. Thereafter the executives, at staff meetings held for the different shifts of employees, protested the action of the Unit in only suspending the request for collective bargaining and not rescinding it, asking the em-

ployees if they were not thereby "binding themselves to outsiders and ceasing to be free agents," particularly unless they obtained back their authorizations to bargain collectively, which were held by Watson as an officer of the Unit and which he refused to deliver up.

34. Immediately after these events Watson was transferred to serve as filing editor of the South wire, a position for which he was not fitted either by experience or by temperament, because it involved sitting at a desk all day and did not employ his experience and skill as a reporter and one where complaints were usual and the people served were difficult to please. The transfer was a punishment for Watson's Guild activities and was so considered by him and by the other employees.

35. Watson continued his work on the South wire until about January 1, 1935, and performed it satisfactorily, receiving only one complaint, that from Respondent's Atlanta office, objecting to the prefix "Mrs." used in front of the name of a prominent married negro woman, stating that they had repeatedly complained of calling a negro "Mrs." or "Mr."

36. Watson, however, continued his Guild activities, being one of a delegation to call upon President Roosevelt [fol. 58] in November, 1934, to request a code for press associations, and in December, 1934, representing the Guild at a code hearing in Washington, D. C., against the protests and objections of Respondent, as referred to in 26 above.

37. In January, 1935, a special department or desk was set up in Respondent's New York office to handle the copy coming over five special wires from the Hauptmann murder trial in Flemington, New Jersey, and Watson was assigned as head of the desk with one assistant; and during the period of about a month while the trial lasted, he had full charge of the day shift of supervising the sending out of news of that trial, which was the most important news event of the period.

38. Watson was asked to assume the important responsibility described in the preceding paragraph because Respondent at that time had no other available and suffi-

ciently experienced and capable man, and his service in that capacity was much praised by member editors.

39. At the conclusion of the Hauptmann trial and as a result of the difficult and strenuous activities connected therewith, following his harsh and unpleasant experience on the South wire, Watson had an illness in the nature of a breakdown, causing him to take two weeks' leave in addition to his regular vacation period.

40. Thereafter Watson continued his Guild activities and in the summer of 1935 was spokesman for the Newspaper [fol. 59] Guild of New York in attempting to negotiate with the "Brooklyn Eagle", a member newspaper of The Associated Press.

41. Immediately thereafter Watson was transferred to the early shift, from 12:00 midnight to 8:00 A. M., in spite of the fact that the day city news editor had requested his services for that staff and that by long tradition in Respondent's office the day city editor had always his pick of men, since it was the most desired of the positions open to editorial employees.

42. Work on the early shift is not desired, since it is routine activity, without outside assignments of special reporting, along the lines for which Watson had shown himself peculiarly fitted, and particularly unpleasant in the matter of hours for a man who, like Watson, had and lived with a family. It was customary for Respondent to put its less experienced men on the early shift, and the assignment of Watson to it was as punishment for his Guild activities.

43. Watson protested many times against this transfer to his executive news editor, J. M. Kendrick, and asserted that it was punishment for his representation of the "Brooklyn Eagle"; Kendrick denied that he knew of the affair of the "Brooklyn Eagle", but did say that Watson's activities with the Guild had lessened his value to The Associted Press and that, if he had said the things about Respondent which Watson had, then he would quit it.

[fol. 60] 44. Thereafter Watson served on the early shift until his discharge and, by the chance of the time when they happened, was called upon to handle certain important

news, one being the events wherein the steamer "Dixie" struck a reef and at the same time a hurricane struck Florida, and the other being the death of Senator Huey Long of Louisiana. On both of these the headlines sent in from the local representatives of Respondent at the scenes of the news were held unsatisfactory by the news editor; they were rewritten under Watson's direction, and as a result th elocal offices were complimented by the Respondent's general manager and members upon their handling of the news.

45. While the story of the "Dixie" was still being reported, Kendrick wrote a note to the acting early editor on official white paper of the kind used to make up personnel records of the employees, and not upon the message paper ordinarily used for general directions to editorial employes, which note stated: "Tell Watson to give it all he has. His work the last two nights has not been up to snuff."

46. On October 7, 1935, the editorial employees were notified that the five-day week was withdrawn and that a six-day week was effective at once.

47. On October 9, 1935, Watson introduced before the Associated Press Unit of the American Newspaper Guild a resolution, asking the Guild to begin collective bargaining on its behalf, and a referendum on the resolution was completed on October 11, 1935. The resolution recited particu-
[fol. 61] larly the fact that the respondent had rescheduled the six-day week without notice to the workers and without affording opportunity for discussion or adjustment and that an agreement continuing the policy of the five-day week, among other things, was needed to safeguard the interests of employees and was otherwise fair and equitable, and therefore the Unit selected the American Newspaper Guild by its proper committee to act as the exclusive representative for the purpose of collective bargaining in respect of conditions of employment and particularly in respect of hours of employment.

48. Seventy-two voted on the referendum and the vote was all but unanimous in favor of and adopting the resolution. At the time, the Guild contained about 95 or 96 members, and the vast majority of the editorial employees of Respondent's New York office, whether members of the Guild or not, favored the action taken.

49. On October 17, 1935, the American Newspaper Guild, by its National Executive Board (that being the board or committee which, under the constitution of the Guild, was authorized to conduct collective bargaining for guild units), wrote to Kent Cooper, Respondent's general manager, referring to the resolution by the Unit adopted on October 11, 1935, and asking for an opportunity to "discuss with you the subject of hours and conditions of employment, with the purpose in view of negotiating a collective agreement."

[fol. 62] 50. This letter was received by Respondent the next day, October 18, 1935, and thereupon Watson was discharged, with a month's pay in advance, the executive news editor Kendrick stating to him as the reason, "Because we are dissatisfied with your work, you are dissatisfied with us, and I am convinced that you will be happier elsewhere." Kendrick on that day had recommended to Cooper, Respondent's general manager, that Watson be discharged for five reasons, of which the second was, "He is an agitator and disturbs the morale of the staff at a time when we need especially their loyalty and best performance"; and Cooper had approved the recommendation with the notation, "But solely on grounds of his work not being on a basis for which he has shown capability", with the "But" heavily written in pencil and the "solely" underlined.

51. Since October 18, 1935, Watson has not been employed by the Respondent, and has been refused re-employment, although he has been ready, able, and willing to work for Respondent.

52. Watson secured work from the Federal Theatre project of the Works Progressive Administration of the United States Government, and was employed by them from November 21, 1935, to the time of the hearing as manager-producer of "The Living Newspaper", at a salary of $200 a month; whereas his salary paid by Respondent prior to November 18, 1935, had been at the rate of $295 a month.

[fol. 63] 53. On October 22, 1935, Cooper, Respondent's general manager, replied to the letter of the Guild of October 17, 1935, and stated, among other things, that he could not without instructions from his board of directors "consider negotiations with outsiders looking toward such an

eventuality as you have suggested." Thereafter further correspondence was had between the attorneys for the Guild and Respondent's executives, wherein the former pressed for a hearing to discuss collective bargaining and the latter referred the matter to the meeting of Respondent's board of directors to be held in January; and thereafter these proceedings were instituted.

54. After the discharge of Watson membership in the Associated Press Unit of the Guild fell off to about 85 and there was a falling off in the collection of dues; at the time of the hearing the membership was increasing and the collection of dues had improved. The reduction in Guild membership was due directly to the opposition of Respondent to the Guild activities and the fear of the employees of reprisals for such activities.

55. Watson and the other editorial employees of Respondent at its New York office in the activities hereinbefore described were directly engaged in interstate and foreign commerce by facilitating and making possible the flow of news from place to place throughout this country and other countries; and any interference with or cessation of such activities would hamper, impede, and interfere with such commerce.

[fol. 64] 56. Any cessation of editorial activities at the New York office would cause a break in the flow of foreign news and of some of the important domestic news and, until such break could be repaired or in some manner overcome, would seriously impede, if not prevent, the issuance of newspapers in all parts of the country. Random tests of the dependence of newspapers variously located on Respondent's continued service showed a paper in Dayton, Ohio, with nineteen stories and one photograph on its front page credited to Respondent; one in Portland, Maine, with eight such stories and one photograph; one in San Francisco, California, with nine such stories; one in Phoenix, Arizona, with eleven such stories; one in Memphis, Tennessee, with twenty-seven such stories; and with each of such papers carrying, in addition to such stories appearing on its front page, many other such stories on other pages.

57. The sole reason for the discharge of Morris Watson by Respondent through Cooper, its general manager, on October 18, 1935, and its refusal of employment to him since

that date was that said Watson joined and assisted a labor organization known as the American Newspaper Guild, through its Associated Press Unit, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

58. By the discharge and refusal to employ said Morris Watson, as above set forth, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

[fol. 65] 59. By said discharge and refusal to employ said Morris Watson, Respondent has discouraged membership in the labor organization known as the American Newspaper Guild, Associated Press Unit.

60. The facts as to the wide extent and character of the Respondent's business were presented by the assistant general manager of Respondent (produced as a witness at the request of the National Labor Relations Board), by documentary evidence, by the allegations of the Respondent in its answer and motions in this matter, and by its affidavit in the injunction suit brought to restrain these proceedings. While Respondent took no part in the production of evidence referring to the discharge of Watson, nevertheless the documentary and other evidence respecting it was clear and decisive. It is clear that Respondent's challenge to these proceedings is based not on any substantial dispute as to the facts, but upon its claim that there are factors peculiar to its business, requiring accuracy in news gathering and freedom of the press, which make the Act inapplicable or invalid with respect to it. Yet the policy of the Act seems clearly applicable to the situation here disclosed; and, pursuant to its policy, accuracy or other requirements of this form of employment would appear not to be hampered, but even promoted by the presence of contented employees under labor relations determined by the Congress to be generally desirable, and freedom of the press would be facilitated by a freedom of organization granted to its highest skilled, equally with its other, employees.

[fol. 66] Conclusions and Recommendations

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent, by refusing to bargain collectively and by discharging and refusing to employ Morris Watson, and thus discouraging membership in the labor organization known as the American Newspaper Guild and the Associated Press Unit thereof, and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 2, subdivisions (6) and (7), of said Act.

2. Respondent, by the discharge and refusal to employ Morris Watson, and by its refusal to bargain collectively with the American Newspaper Guild, as set forth in the above findings of fact, has engaged in and is engaged in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

3. Respondent, by the discharge and refusal to employ Morris Watson, and by its refusal to bargain collectively with the American Newspaper Guild, as set forth in the above findings of fact, has engaged in and is engaged in [fol. 67] an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from refusing to bargain collectively with the American Newspaper Guild, the representative of its editorial employees, and discouraging

membership in any labor organization by discrimination in regard to hire or tenure of employment and by the discharge and refusal to re-employ Morris Watson.

3. In order to effectuate the policies of the Act, Respondent take- the following affirmative action:

a. Reinstate Morris Watson as editorial employee at once at his former salary of $295 a month; repay to him all loss of salary by which his earnings have been less than $295 a month during the period of his discharge; and bar- [fol. 68] gain collectively with its editorial employees through the American Newspaper Guild and its National Executive Board, duly chosen representative of the Associated Press Unit of such Guild.

b. File with the Labor Board Director for the Second Region a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that, unless on or before 10 days from the date when this report is served upon the Respondent, the Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order to require the Respondent to take the action as aforesaid.

Dated, April 23, 1936.

(Signed) Charles E. Clark, Trial Examiner.

April 24, 1936.

The Associated Press, 383 Madison Avenue, New York City.

Attention Mr. Kent Cooper.

Case II-C-28

GENTLEMEN:

We enclose herewith Intermediate Report of Charles E. Clark, Trial Examiner in the recent matter before this Board.

[fol. 69] In submitting this report your attention is directed to the provisions of Sections 32 and 33 of Article

II of the Rules and Regulations with respect to the taking exceptions to the Findings contained in the report.

Very truly yours, Elinore Morehouse Herrick, Director, Second Region.

Enclosure.
EMH:D.

April 24, 1936.

Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City.

Attention: John W. Davis, Esq.

Case II-C-28

GENTLEMEN:

We enclose herewith Intermediate Report of Charles E. Clark, Trial Examiner, in the recent matter before this Board.

In submitting this report your attention is directed to the provisions of Sections 32 and 33 of Article II of the Rules and Regulations with respect to the taking of exceptions to the findings contained in the report.

Very truly yours, Elinore Morehouse Herrick, Director, Second Region.

Enclosure.
EMH:D.

[fol. 70] Letterhead of Davis Polk Wardwell Gardiner & Reed

27 April, 1936.

Mrs. Elinore Morehouse Herrick, National Labor Relations Board, 45 Broadway, New York, New York.

DEAR MRS. HERRICK:

This will acknowledge the receipt of your letter of the 24th, enclosing a copy of the Intermediate Report of Charles E. Clark, Trial Examiner in Case II-C-28.

Yours very truly, (Signed) John W. Davis.

[fol. 71] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-C-28

[Title omitted]

CERTIFICATE OF REGIONAL DIRECTOR

I, Elinore Morehouse Herrick, the Regional Director for the Second Region, National Labor Relations Board, do hereby certify that the attached documents, namely:

1) Charge.

2) Complaint.

3) Return of Service.

4) Answer.

5) Amended Notice of Hearing (December 30, 1935).

6) Affidavit of Service.

7) Amended Notice of Hearing (March 20, 1936).

[fol. 72] 8) Affidavit of Service and Exhibits A and B.

9) Amended Notice of Hearing (March 21, 1936).

10) Return of Service.

11) Amended Notice of Hearing (April 2, 1936).

12) Return of Service.

13) Notice to Produce.

14) Return of Service.

15) Order Designating Trial Examiner.

16) Rules and Regulations.

are true and correct copies of the originals of the above named documents in the above entitled matter on file in the Regional Office of the National Labor Relations Board for the Second Region.

In witness whereof I have hereunto set my hand this 6th day of April, 1936.

—— ——, Regional Director for the Second Region, National Labor Relations Board.

[fol. 73] BEFORE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-R-3

In the Matter of THE ASSOCIATED PRESS, A CORPORATION,

and

AMERICAN NEWSPAPER GUILD, by the National Executive Board Thereof

Statement of Evidence

Room 433, Old Post Office Building, New York City, N. Y.

April 7, 1936.

The above entitled matter came on for hearing, pursuant to notice at 10:00 o'clock A. M.

Before Dean Clark, Esq., Trial Examiner

APPEARANCES

David A. Moscovitz, Esq., Attorney for the Board.

Greenbaum, Wolff & Ernst, Counsel for the American Newspaper Guild, 285 Madison Avenue, N. Y. C.

[fol. 74] Morris L. Ernst, Esq., and Callman Gottesman of counsel.

Davis, Polk, Wardwell, Gardiner & Reed, Counsel for Respondent, 15 Broad Street, N. Y. C.

William C. Cannon and Harry W. Bissel, of counsel.

COLLOQUY

Trial Examiner Clark: Well, gentlemen, are you ready to proceed? I think first we had better have a notation of the appearances.

Mr. Cannon: I am about to make a notation of a special appearance, and I think I had better do it for the record at this time.

Trial Examiner Clark: Will you state the appearances please?

Mr. Cannon: I am noting a special appearance.

Trial Examiner Clark: For the Associated Press?

Mr. Cannon: Yes.

Trial Examiner Clark: And Mr. David A. Moscovitz for the National Labor Relations Board and Morris L. Ernst for Morris Watson and the American Newspaper Guild.

Mr. Cannon: Is Mr. Watson a party to the proceedings?

Mr. Moscovitz: Mr. Watson is not a party to the proceedings. The proceeding is in the name of the Board as issued. Mr. Ernst represents the American Newspaper Guild of which Mr. Morris Watson is a member. The American Newspaper Guild is here as the organization involved in the determination of whether it shall represent [fol. 75] certain editorial employees of the Associated Press for the purposes of collective bargaining. And I think, after I introduce the proceedings in the case, that question will be cleared up, Mr. Examiner, I would like at this time to introduce a certification under the signature of Elinore Morehouse Herrick, the Regional Director of the Second Region of the National Labor Relations Board of the pleadings in this case as well as notice of various returns of service and the order designating the Trial Examiner, and the Rules and Regulations. It is referred to as Case II-C-28. At the same time I would like to introduce a certification under the signature of Elinore Morehouse Herrick of the Petition and all other necessary papers, Notices and Returns, the Order designating the Trial Examiner and the Rules and Regulations in the representation case designated as Case II-R-3. Both cases being consolidated by order of the Board, which I am also introducing at this time, the order being headed "Order Providing for Hearing in Conjunction with the Proceedings under Section Ten of the National Labor Relations Act, in the matter of the Associated Press and American Newspaper Guild, Case number II-R-3. This order is under the signature of Secretary of the Board.

Trial Examiner Clark: Those will be marked, I should think we had better have them marked separately.

Mr. Moscovitz: That depends entirely as you like. It is being heard as one case by order of the Board.

Trial Examiner Clark: All right, but I think the documents might be a little clearer if marked separately.

[fol. 76] Mr. Moscovitz: Exhibit number one would be case papers, II-C-28. Exhibit number two would be II-R-3, and

the order to which I have referred would be exhibit number three.

(Documents referred to received in evidence, marked respectively Board's exhibits numbers one, two and three.)

Mr. Moscovitz: Before proceeding further Mr. Examiner, I understand Mr. Cannon has a statement which he would like to make.

Mr. Cannon: All right, sir. May it please the Examiner, we appear especially for the Associated Press in these two proceedings for the purpose of making the following motions: In case number II-C-28, we move as follows—I have here the motions typed, I think I might read them for the purposes of the record.

Trial Examiner Clark: All right.

MOTION TO DISMISS, ETC.

Mr. Cannon: "The National Labor Relations Board, by Elinore Morehouse Herrick, its Regional Director for the Second Region, having served upon the above named The Associated Press on December 4, 1935 (a) a complaint alleging that The Associated Press has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act and (b) a notice of hearing on the allegations of said complaint; and

"The said The Associated Press having filed an answer to said complaint on December 18, 1935; and

[fol. 77] "The Associated Press not waiving but insisting that the National Labor Relations Act is not in truth and fact a law and cannot be enforced by or through the purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director for the Second Region, its agent or otherwise; that said pretended statute is unconstitutional, void and of no force and effect for the reasons hereinafter stated; that said National Labor Relations Board is without authority in law to issue a complaint with respect to the alleged unfair labor practices above mentioned, or to issue any order or direction or

notice to The Associated Press, or to conduct a hearing upon the aforesaid questions of unfair labor practices; and

"The said hearing, after various adjournments, having been set for April 7, 1936;

"Now, Therefore, The Associated Press, protesting against all acts of said Board and its agents in the premises, moves (1) to dismiss the aforesaid complaint of the National Labor Relations Board and (2) to set aside and cancel the said notice of hearing on the ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect for the following among other reasons:

(a) Said Act by its language, purpose and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereof;

[fol. 78] (b) Said Act deprives the officers and directors of The Associated Press and its members of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(c) Said Act deprives The Associated Press and its members of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(d) Said Act abridges the Freedom of The Associated Press and its members in gathering, formulating, transmitting and publishing news in the newspapers owned by members of The Associated Press, in violation of the Constitution of the United States and the First Amendment thereof; and on the further ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect in so far as it purports to authorize a determination with respect to alleged unfair labor practices of The Associated Press since the said subject matter does not come within the commerce or other powers of Congress."

I will file the formal notice of motion which I have just read.

Trial Examiner Clark: I expect we had better have that marked in exhibit.

(Document referred to received in evidence, marked respondent's exhibit number one.)

[fol. 79] Mr. Cannon: And in case number II-R-3, I will make the following motion:

MOTION TO DISMISS, ETC.

"American Newspaper Guild, pursuant to Section 9 (c) of the National Labor Relations Act and the Rules and Regulations relating thereto, having heretofore filed with the purported National Labor Relations Board, Second Region, a petition verified December 4, 1935, for an investigation and certification of representatives of the employees in the editorial department, not engaged in an executive capacity, of The Associated Press; and

The purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director, for the Second Region, having heretofore served upon The Associated Press a notice of hearing upon the aforesaid question of representation, together with a copy of an order of the said Board dated December 16, 1935, providing that the hearing be held in conjunction with a purported proceeding under Section 10 of said National Labor Relations Act entitled "In the matter of The Associated Press and the American Newspaper Guild" and known as Case No. II-C-28; and

"The Associated Press not waiving but insisting that the National Labor Relations Act is not in truth and fact a law and cannot be enforced by or through the purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director for the Second [fol. 80] Region, its agents or otherwise; that said pretended statute is unconstitutional, void and of no force and effect for the reasons hereinafter stated; that said National Labor Relations Board is without authority in law to entertain a petition for investigation and certification of representatives pursuant to Section 9 (c) of the said National Labor Relations Act, or to issue any order or direction or notice to The Associated Press, or to conduct a hearing upon the aforesaid question of representative or representatives of such employees of The Associated Press, or to certify the name or names of the representative or representatives purportedly selected or designated by the said Board; and

The said hearing, after various adjournments, having been set for April 7, 1936;

Now, Therefore, The Associated Press, protesting against all acts of said Board and its agents in the premises, moves (1) to dismiss the aforesaid petition of the American Newspaper Guild and (2) to set aside and cancel the said notice of hearing and the said order relating thereto on the ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect for the following among other reasons:

(a) Said Act by its language, purpose and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereof;

[fol. 81] (b) Said Act deprives the officers and directors of the Associated Press and its members of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(c) Said Act deprives The Associated Press and its members of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(d) Said Act abridges the freedom of The Associated Press and its members in gathering, formulating, transmitting and publishing news in the newspapers owned by members of The Associated Press, in violation of the Constitution of the United States and the First Amendment thereof; and on the further ground that the National Labor Relations Act is void, unconstitutional and of no force and effect is so far as it purports to authorize an investigation, hearing or certification relative to collective bargaining by or on behalf of the aforesaid employee unit with The Associated Press since the matters do not come within the commerce or other powers of the Congress."

Mr. Cannon: I file a formal motion which I have just read.

Trial Examiner Clark: That will be marked respondent's exhibit number two.

(Document referred to received in evidence, marked respondent's exhibit number two.)

[fol. 82] Mr. Cannon: At the request of the Labor Board, Mr. Stratton, the Assistant General Manager, of the Associated Press is present and prepared to testify, without prejudice, however, to the motions which I have just made. It is not our purpose to participate further in the proceedings except as occasion might arise.

Trial Examiner Clark: Very well.

On the motion proper, so far as they bring out points of unconstitutionality unconnected with interstate commerce, I would deny the motions. I do not know whether it is desired to introduce evidence on the interstate commerce feature at this time or not. If so, you may proceed.

Lloyd Stratton, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moscovitz:

Q. By whom are you employed, Mr. Stratton?

A. By The Associated Press.

Q. In what capacity?

A. My title is Assistant General Manager.

Q. How long have you been employed by The Associated Press?

A. Sixteen years.

Q. In what capacities?

A. Editorial throughout.

Q. Your present position is an editorial position, is it?

A. It is executive, Mr. Moscovitz, specifically, although [fol. 83] the nature of our work, of course, is entirely editorial and as such, while we are in an administrative capacity, our work is entirely editorial. It concerns an editorial business.

Q. Are you familiar with the operations of the Associated Press?

A. Generally?

Q. Yes. Are you familiar with their policies as enunciated through the years you have been associated with the company?

A. Yes.

Q. Do you have any supervision over labor relations?

A. I do not, sir.

Q. Who is in charge of labor relations for the Associated Press?

A. We don't have such a thing, Mr. Moscovitz. We do not have in our organization what you describe as labor relations.

Q. Yes. Is there no one at the Associated Press to whom employees' questions may be submitted for consideration?

A. Yes, the general manager.

Q. I see. Then he is the person who would be in charge of what I term labor relations?

A. The general manager of the Associated Press is in charge of the personnel of the Associated Press.

Q. Are you, through your associations, during the years with the corporation, familiar with personnel policy?

A. Well, in recent years I have been familiar with it to the extent of my association in the executive offices of the Associated Press.

Q. And your general manager is Kent Cooper?

A. Yes.

Q. What are your exact duties today?

A. General office executive, Mr. Moscovitz.

Q. Answerable to whom?

A. The general manager.

Q. Act immediately under him?

A. Yes.

[fol. 84] Q. You are the next person in command, as it were?

A. I am an assistant general manager.

Q. Do you have with you a copy of the certificate of incorporation of the Associated Press?

A. You mean, our constitution and by-laws?

Q. Yes.

A. Yes.

Q. May I see it?

A. That is the Charter and By-laws of the Associated Press.

Q. What is the exact name of the Associated Press? Is it The Associated Press Incorporation?

A. The Associated Press.

Q. The Associated Press?

A. I emphasize "The", Mr. Moscovitz, because it is part of the corporate title.

Q. I see.

Mr. Moscovitz: And certain information pertaining to the corporation is contained, Mr. Examiner, in the pleadings which have been filed in this case, both the Complaint and the Answer.

By Mr. Moscovitz:

Q. What type corporation is it?

A. A membership corporation.

Mr. Moscovitz: Mark this for identification, please.

(Book referred to marked for identification Board's exhibit number four, witness Stratton.)

My Mr. Moscovitz:

Q. I have here, Mr. Stratton, Board's exhibit number [fol. 85] four marked for identification, which is the 1934 directory of the Associated Press. Is that the last statement which has been issued by the Associated Press?

A. That is the latest issue.

Q. Now, the first paragraph of this directory states that the Associated Press "is a union of persons representing more than thirteen hundred morning, evening, Sunday newspapers, having for its purpose the collection and distribution of the important news of the world". That is, to your knowledge, and belief, a true statement?

A. Yes.

Q. Do you know whether or not there has been any change in the situation described in the first paragraph from the date of issuance of this directory to date?

A. No, sir, except, well—inasmuch as it says that our membership totals more than thirteen hundred daily newspapers. "More than" means anything between thirteen hundred and fourteen hundred I presume.

Q. But it is clear that——

A. The only change would be in the number of members.

Q. Are the members of the Associated Press all proprietors or representatives of certain newspapers?

A. Would you state that again please?

Q. Are the members of the Associated Press proprietors or representatives of certain newspapers?

A. Yes, any member of the Associated Press must be a daily newspaper—a daily newspaper, if that will answer your question.

Q. You don't have members, for instance, who issue bi-weeklies?

A. Do we have members who issue bi-weeklies?

Q. Yes.

A. We have in membership, yes, a number of papers [fol. 86] which are published weekly and bi-weekly.

Q. So it does not necessarily have to be a daily publication?

A. A daily publication receives the full service of the Associated Press. Any other than a daily newspaper who enjoys the privileges of a member receives only so much of the service that entitles him to qualify as a member. The principal reason being for such few weekly newspapers or semi-weekly newspapers being to the advantage of that newspaper for its news territory. They must qualify as a member to the degree that they supply their news to the Associated Press.

Q. Does the Associated Press have any subsidiaries or affiliates?

A. We have the Associated Press of Great Britain, of which there is a branch office in Paris. Then there is the Associated Press, G. M. B. A. The G. M. B. A. in our understanding of the letters, meaning, as I imagine, located in Berlin, are the only affiliates, you might say that we have.

Q. Now, there are other organizations abroad who have connections with the Associated Press here and arrangements with the Associated Press here, aren't there?

A. We have exchange of news.

Q. I don't want you to go into it. I just want the distinction at this point. Are there or are there not?

A. Oh, yes, yes.

Q. There are?

A. Yes.

Q. And the ones to whom you have already referred being the Great Britain and the one, the G. M. B. A. one, are they affiliates as we know affiliates?

A. Well, to the extent that they are organizations established for the purpose of producing news pictures for the Associated Press of New York——

[fol. 87] Q. Yes. How does the arrangement work out between the Associated Press in this country and the Associated Press in Great Britain?

A. Well, the only arrangement at the present time being that the Associated Press of Great Britain is the picture producing unit for the Associated Press of New York, their organization functions to obtain news pictures of news events abroad to be supplied to the Associated Press of New York.

Q. And does the Associated Press of New York act in the same manner insofar as the Associated Press of Great Britain is concerned?

A. There is a certain reciprocal arrangement there, but it is purely secondary. It is incidental so far as the primary purposes of the two companies are concerned. The British company has access to the news picture products of the Associated Press of New York for such use as they can make of it.

Q. Is there an interchange of pictures between the two?

A. Yes.

Q. Is there also an interchange of news between the two?

A. No, the British company is strictly a picture producing unit up to this time.

Q. I see. And do they use any of the news of the Associated Press for their own purpose?

A. No, sir.

Q. Is there a constant interchange between the two?

A. Yes.

Q. Daily?

A. Not daily. It is subject to method of delivery, most of it by boat. The boats going and coming usually are carrying the products, incoming and outgoing.

Q. You say, mostly by boats—are there any other methods of transportation?

A. Yes.

[fol. 88] Q. What?

A. Occasionally you will notice a picture if it is outstanding enough, important enough, to warrant radio transmission, it will be carried by that facility?

Q. And that is only in really important cases?

A. Outstanding pictures.

Q. Outstanding events, is that it?

A. Yes.

Q. And of course you really cannot say how common that practice can be, can you. It is dependent upon how important the situation is that arises abroad, is that it?

A. Depending upon the spot importance of the event.

Q. Yes. And how does the Associated Press in Great Britain know which pictures to send to New York and when to send pictures to New York?

A. Well, occasionally the picture is of such unquestioned value that it is what we say "A natural", where there is doubt, there is the customary inquiry whether the Associated Press should like to have this picture by cable, in which event the picture editor will advise yes or no.

Q. Do you have any idea of the volume of that particular business, simply for the purpose of getting an idea of how much business is carried on between the two offices?

A. How do you mean? How many pictures are exchanged?

Q. Yes.

A. Well——

Q. How many pictures do you receive from Great Britain, normally interchanged, say, in an average week, or if it is better for your purpose, an average month?

A. I could hardly hazard that, Mr. Moscovitz. It varies, you see, constantly. I should think if it is a matter of any [fol. 89] consequence I should try to give you an answer that would be more correct than I could get because I am not personally able to do that.

Q. Well, would you have any objection to making a note of that particular question and refreshing your recollection at your office and bring the information in to me for submission?

A. That is approximately how many pictures we receive, say, weekly, or monthly?

Q. Weekly or monthly, taking an average week or month?

A. From the British company?

Q. From the British company?

A. Yes.

Q. And how many you people in turn send to the British company.

Mr. Moscovitz: It that satisfactory?

A. I could make a guess but I don't want to guess.

By Mr. Moscovitz:

Q. I would just as soon you didn't and that would also apply to the other method of procuring and sending pictures, aside from boat transportation?

A. You mean, to include the pictures that are transmitted by radio?

Q. That's right.

A. Yes.

Q. And would you also do the same for the other company to which you have referred?

A. The German company?

Q. The German company.

A. Yes.

Q. Are the photo service, the News Photo Service, independent units?

A. From an operating standpoint?

Q. Yes.

A. Oh, yes.

Q. Do you have any other such units, similar units, [fol. 90] which are independent from an operating standpoint?

Mr. Cannon: Do you mean another department, Mr. Moscovitz?

By Mr. Moscovitz:

Q. Yes.

A. Do you mean do we have any other companies organized as separate units.

Q. I will ask it this way? You have a wire photo department?

A. Yes.

Q. Is that an independent service?

A. It is a news photo service.

Q. Is that the proper name?

A. Yes.

Q. Now, is your news photo service an independent organization?

A. No.

Q. Is it just a department of the Associated Press?

A. It is a department of the Associated Press.

Q. Does the same go for your feature service?

A. Yes.

Q. And for your wire photo service?

A. The wire photo service, so-called, Mr. Moscovitz, is purely a method of transmission of the news photo service. Wire photo itself is not a service, it is merely a method of transmitting pictures by wire. It transmits the wire photo

system, transmits the news pictures produced by the news photo service of the Associated Press.

Q. I see. Would you call it a separate department?

A. Not at all.

Q. You wouldn't call it a unit?

A. Wire photo is just an——

[fol. 91] Q. An operation?

A. Purely a mechanical operation.

Q. We will go into that a little later. Where is the company's main office?

A. New York City.

Q. And what is its address?

A. 383 Madison Avenue.

Q. And whose is in charge of the affairs of the Associated Press?

A. The general manager. I assume there you mean, Mr. Moscovitz, who is the executive head of the Associated Press in charge of its operations?

A. Yes, I will refer you to paragraph one, page three of Board's exhibit number four, marked for identification. I would like to read it to you: It is stated there "that the affairs of the corporation are in control of a Board of Directors elected from among the representatives of the individual member newspapers. However, the Board of Directors by resolution has conferred upon the General Manager executive control of the news service and personnel." Is that correct?

A. That's right.

Q. And Mr. Ken Cooper is the general manager to whom this particular provision would refer. Is that correct?

A. Yes.

Q. Do you know whether or not there has ever been a majority of directors referred to in the paragraph I have just stated who come from New York?

A. Whether there has been a majority of directors from New York?

Q. Yes.

A. Not to my knowledge.

Trial Examiner Clark: Is that city or state?

Mr. Moscovitz: The state of New York.

A. Neither.

[fol. 92] Q. There never has been a majority from the city of New York and there never has been a majority

from the state of New York?

A. No.

Q. So your directorship is one that would be distributed throughout the country?

A. Yes.

Q. Throughout the world?

A. No.

Q. Throughout the United States of America?

A. United States.

Q. I see. Now, is the New York office the office at which Morris Watson worked?

A. That was his last office of employment, yes.

Q. Is that also the office where the editorial employees involved in the questions before the Board are employed?

A. You refer to which question, Mr. Moscovitz?

Q. Well, representation, collective bargaining—not collective bargaining, I would like that stricken, the question of the unit appropriate for collective bargaining is the question we have been discussing for weeks.

A. I understand so from the notice that has been filed with us, otherwise I don't know.

Q. Now, will you tell me precisely what business the associated press is engaged in?

A. It collects and distributes news.

Q. And does it have offices and branches in other places outside of the city of New York?

A. Yes. Perhaps I can assist you, if there is something particularly you are looking for, I may direct your attention — it.

Q. I have it, but it is a question of how best to introduce it for the record. I will show you Board's exhibit number four marked for identification, and ask you, if, starting on page five, and following through page five to the end of the [fol. 93] directory, is contained what is a correct description and listing of offices, branches and divisions of the Associated Press, showing both geographical locations and points of news dispatch?

A. There may be some minor changes, Mr. Moscovitz, that would bring this up to date so far as changes in the personnel which may have come about since this directory was issued. I am not sure, perhaps there have been another correspondent established somewhere, but generally this

represents the name, location, address of our business, our bureaus in the United States. Also it——

Q. Does it also show your foreign services throughout the world?

A. Also the name, location, address of our foreign bureaus, also the name and location of certain of our string correspondents.

Q. Of your what?

A. String correspondents.

Q. What do you mean by that?

A. Correspondents which are not employees of the Associated Press but who act for The Associated Press on a string basis, we shall say.

Mr. Cannon: Piece basis.

A. We pay them for what they serve us.

By Mr. Moscovitz:

Q. On what page are they listed?

A. Appearing on page seventeen. For example, Mr. Sedgwick, at Athens, Greece, any time there should be a news event in Athens sufficiently in importance to be reported for the Associated Press, Mr. Sedgwick would file story to us for which he would be paid on what we call a string basis, that is, a piece basis.

[fol. 94] Q. Mr. Sedgwick and other string people, people who are associated with newspapers as such, to your knowledge?

A. Every opportunity we have we employ only a string correspondent under the circumstances who is an experienced practical newspaper man.

Q. I see.

A. To the best of our knowledge the correspondents of the Associated Press all are of that experience.

Q. And they work sort of piece rate basis? I mean they get the story that they think is all right and they send it in to you and you pay them for it?

A. Not what they think is all right.

Q. What who thinks?

A. It must be a story that is of a character important enough in its facts and in its interest to justify filing to the Associated Press.

Q. I see. And who passes upon the question of whether it is justified?

A. The Control Bureau.

Q. And who is the Control Bureau?

A. It may be any bureau. The Associated Press is a system of broken down controls so far as the immediate supervision of the news is concerned. For example, take the case of Athens, the London Bureau is the supervisor, the news supervisor for any output or any receipt of news from Athens.

Q. They pass upon its import and interest?

A. That's right.

Q. And they in turn dispatch it to you?

A. Yes.

Q. Do you have a Board here who passes on it again?

A. It is again reviewed.

Q. Who is the final board of review?

A. In the foreign service, we are carrying this along [fol. 95] in sequence, in the foreign service, the cable desk in New York.

Q. In New York?

A. On news coming from Europe.

Q. Now, all news that comes from Europe, regardless of what point abroad is ultimately passed upon by this review board in New York City, is that it?

A. Well, a great deal of it, I regret to say, does not reach New York, Mr. Moscovitz, because at one of these supervisory bureaus it has been determined that the story was not worth while.

Q. All the news that does get to New York?

A. I wouldn't say all, but I should say that in practice the average volume of our news from Europe eventually will find its way to New York for distribution to the members in the United States. Now, there are times —I am trying to be very precise about this—there are occasions when a certain piece of news will find entree into some other point, some of our other points, for example, some situation may develop where communications have been disrupted in the ordinary channel and it will follow another channel, but before that news reaches members of the Associated Press from any point, it is always received in the United States by a Bureau and editorially considered there before it is distributed.

Q. Now, what is the disruption to which you have referred which may make some change in the manner in which these news items are distributed?

A. Oh, there may be a cable break down, there may be —oh, any number of physical things that will interfere with the normal flow, normal movement of a piece of news. Usually a cable failure, sometimes a failure of communica- [fol. 96] tion between a point in Europe and a point in London or between Geneva or between Paris, which would necessitating the routing of that story by another direction.

Q. Are you bothered by very many of these disruptions?

A. No.

Q. Pretty well guarded and protected is it?

A. Well, we try to have an alternative to follow in event that these facilities which we use—but over which we have no control whatever—should for one reason or another fail. It is necessary for us to try to find another outlet.

Q. What alternatives do you use?

A. It is usually a re-routing, it is following lines in another direction, round about rather than direct.

Q. And if at any time you have a physical disruption of the coming in of news through cable, it is necessary that you re-route your news and have it come in a different way?

A. We must re-route it in whatever necessity the physical condition requires of us. Particularly if it is a piece of news that we must have.

Q. Have you ever found yourselves in a situation where there has been a break down of your incoming news on the wire, a failure where you have not been able to receive news at all?

A. We have had those, but it is rare now. We have had such a splendid improvement in the technical development of facilities that many times now we go through severe storms and even tornadoes or even hurricanes, and we have been able to maintain a facility of contact through those conditions.

Q. Who is that that comprises your board of review in [fol. 97] New York?

A. You speak of "board of review," do you mean there——

Q. The people who finally pass upon the use of the news?

A. Who are in charge of the general desk?

Q. Well, if that is——

A. In the New York office to the extent that they pass on news coming into the New York office——

Q. From——

A. From any point.

Q. Now, would the same practice be followed whether the news comes in from abroad or points in the United States?

A. No, we have a different situation in technical details.

Q. Take the foreign news that we got into before we got into this business of lines, after it comes to this country, how is it finally passed upon?

A. It comes to the United States by cable.

Q. Yes.

A. In the cable offices located in New York, and it is then relayed into our office, a copy is immediately placed on the cable desk, which desk handles the foreign service, incoming from Europe. That news is put in form for distribution by the cable desk on which there are three tricks, as we call them, we have three shifts, the day shift, the night shift and the early shift, the day shift being eight to four P. M. the night shift from four P. M. to midnight and the early shift from midnight to eight A. M. Each trick is supervised by an editor in charge. The editor in charge, or the staff on his desk, handles the copy as it comes in. They put it out for distribution by the wires. As the copy leaves the cable desk, it is simultaneously delivered to the general desk, the general desk being the desk supervised by [fol. 98] the executive news editors who are in general charge, supervisory charge of the news reports, so that it has——

Q. What is the news report, by the way?

A. So that it has handling and supervision first by the cable desk and those editors, then it has a second reading and supervising by the general desk, and then you might say still a third by the respective editors who are filing or handling that news for its ultimate destination.

Q. The editors being the final say so?

A. The man who really has the final say so is first the foreign news editor, then the executive news editor in charge of the general desk.

Q. I see. For example, it would be possible that the foreign news editor, on receiving a foreign news story, might, in his judgment, feel that it is a story worth while in a certain way, that is, to be distributed in a certain method of preparation. It is possible that the executive news editor in charge of the general desk would have a different judgment. It is possible for the executive news editor on the general desk to veto or to suggest a different preparation, or even killing it entirely.

Q. In all these situations, it would be necessary, wouldn't it, that the person or the persons handling this news be people who exercised judgment rapidly and wisely, is that not so?

A. Very decidedly so.

Q. People who have got to be almost rare in their perception, is that not so?

A. We endeavor to obtain the best men possible to exercise not only those position- but all contributory positions, as far as that is concerned.

[fol. 99] Q. And is that because of the speed and accuracy with which this news must be handled also?

A. Because primarily first it is accuracy, it is truth, its impartiality, it must not be biased. You have got to watch for all those things and there are not too many eyes that can watch for that, which is one reason why we have throughout this service anywhere from one to four lines of defenses on passing on a piece of news.

Q. And isn't it made all the more difficult because with that you have to have the elements of speed and dispatch?

A. Yes.

Q. This news that comes in from foreign points, can you tell me how long it takes generally for news to reach you and be transmitted by you to your members?

A. Well, we must make some allowances there, Mr. Moscovitz. We are always at the mercy of some one else. Assuming there is normal cable delivery from the standpoint of time between——

Q. Well, assuming all normal conditions.

A. Assuming all normal conditions, it is not out of the ordinary for a story to be filed in London, received in New York, from three up to ten minutes, to be editorially supervised, edited for transmission within another two to five minutes, if it is the type of story that is outstandingly

"must" and to be on the wire delivered to the newspaper in an operation that may have an over-all lapse of time of twelve minutes to twenty, I should say, some place in there. That is taking an example, of course, of the type of news that requires prompt dispatch, and that is rare, that is not the general character of most of the news.

[fol. 100] Q. That would be so in the case, for instance, in the case of King George's death?

A. In the case of that you can cut the time down just about half of what I have given you.

Q. I see.

A. I have taken the normal average in the movement of a story that was worth prompt dispatch.

Q. Well, is it rare that you handle these stories which demand prompt dispatch or would the rare situation be the death of, for instance, King George?

A. The story itself always decides that, Mr. Moscovitz, the nature of the story, the character and the importance of the story besides that.

Q. Is the description you have just given me the average condition?

A. It is an average story, which, on its merits requires a prompt dispatch.

Q. What is the longest time you generally take in the handling of a story that comes from abroad which is used?

A. Well, that would be very difficult to answer, for the reason that there are so many things that enter into the handling of a piece of news. A piece of news might come on to the filing editors desk at five o'clock in the morning which, on its face, was worth while, and should be sent to that particular circuit, but if its character was such that it didn't have to be moved immediately, he might wait one hour, two hours, three hours, or as much as five hours and still be able to transmit that story and have it available for publication by the member in time to serve its purpose.

Q. Now, in the usual situation of handling news that comes from foreign points, as well as news that comes from this country, considering the criteria which you have estab-

[fol. 101] lished for the handling of this news, would you say that it is important that these men, these editorial men handling these news be in a clear and happy frame of mind?

A. My hesitancy is not in answer to my question at all,

I am just trying to apply it to some sort of a general statement of opinion of mind, which is what it would be..

Q. Your observation?

A. Certainly, certainly it is desired to have every facility of the highest advantage.

Q. That would make for greater efficiency?

A. It makes for all round general desirability.

Q. Yes. Now, taking again the tricks that you have referred to?

A. Shifts.

Q. The shifts that you have referred to?

A. That would be better.

Q. When is your first shift?

A. Our day shift is eight A. M. to four P. M.

Q. And any particular type men work that shift?

A. No, no different type.

Q. When is your next shift?

A. Four P. M. until midnight.

Q. And when is your next shift?

A. From midnight until eight A. M.

Q. And is that the shift referred to as the early shift?

A. The twelve midnight to eight A. M. is the early shift.

Q. So that there is constant operation?

A. That's right.

Q. Now, take your domestic news. Do you follow the same procedure insofar as the digest news and the passing of it by some reviewing agency is concerned?

A. Yes.

[fol. 102] Q. Yes.

A. Except when we get into the domestic service, of course, we have instantaneous connections in the essentials, the news originally is handled, is passed upon and redistributed in the manner similar to that I have already outlined, except the sources here are domestic.

Q. And it would be more rapid, is that it? You say it is instantaneous. Would you spell that

A. We have the opportunity of instantaneous connections where abroad we do not have that type of connection.

Q. Well, suppose the point of origin of news was California and it had to come to New York and was then going to be transmitted, we will say, to Atlanta, Georgia. How instantaneous would that process be?

A. Well, if it was in the case of the most instantaneous kind of news, it would be,—if Los Angeles had something to say that was worth what we describe as a "flash", why, up to two minutes it is possible to deliver such a brief flash from Los Angeles to Atlanta.

Q. And how long would your average normal situation be?

A. Well, there again you are subject to enumerable conditions, Mr. Moscovitz—editorial and managerial. It would take its place.

Q. All a matter of minutes you would say?

A. It may be minutes, and up to hours again, all depending on the merit of the particular story and the mechanical conditions you have to meet.

Q. I wish you would refer to the directory again which I have not as yet introduced, Mr. Stratton, and see if you can find for me a description of the Canadian set up of the Associated Press?

A. The Canadian Press.

[fol. 103] Q. Yes.

A. The Canadian Press——

Q. Is there a——

A. Reference to the Canadian Press——

Q. What page is that on?

A. It will be found on pages fifty, fifty one and fifty two.

Q. And is that description, to your knowled-e, an accurate description as of today's date?

A. Well, let's see—to the best of my knowledge, it is, Mr. Moscovitz. Of course, I am not certain whether these are the present offices or whether these are an up to the minute list of members of the Canadian Press, but to the best of my knowledge that represents the Canadian press.

Q. You would say the description is accurate and the introductory statements describing the manner in which the operation takes place are accurate?

A. To the best of my knowledge.

Q. Now, is the Canadian Press modeled after the Associated Press in this country?

A. There are many of the essential features of the Associated Press, particularly from a co-operative non-profit membership features that have been embodied in the Canadian press.

Q. It is a co-operative association?

A. Exactly.

Q. Well, what is the nature of its relationship with the Associated Press in this country?

A. It is among the agencies with which the Associated Press has exchange of news relationship.

Q. Which is to be distinguished from membership association?

A. That's right. In other words, the Canadian Press receives our news and we receive the news of the Canadian Press.

Q. Are such arrangements worked out on the basis of contract?

[fol. 104] A. Well, there is a contract of course which establishes the exchange of news which prescribes the exchange of news arrangements which is the object of the contract.

Q. Do you know what the basis of such contract is? Are all your interchange news contracts similar?

A. They are essentially the same, the purpose being to obtain news of the other party in exchange for our news.

Q. Yes, and do you know what the nature of payments may be between the two contracting parties in these cases?

A. Ordinarily it is an out and out exchange of news arrangement.

Q. I mean, the news in Canada being of value to you and your news being of value to them?

A. Well, in the particular case of the Canadian press there is a differential involved which serves the purpose of giving more equity to the Associated Press in exchange of news arrangement. For example, it is rather obvious that the Canadian Press receives a great deal more benefit from the news of the Associated Press than we receive from the Canadian Press. We have the membership of the Associated Press of New York, for example, which undertakes a far greater task, a far greater coverage, and a much broader scope of *of* news coverage and production than does the Canadian Press; as an equity to the membership of the Associated Press in helping to offset that difference, there is a differential established.

Q. Is this a constant interchange of news between the two agencies?

A. Constant.

Q. Daily?

A. Daily.

Q. Wire?

A. Wire.

[fol. 105] Q. Any other method?

A. Oh, they receive some service by mail but it is primarily an exchange by wire. The Canadian Press has an office located in our office to which office our news is delivered at the same time it is delivered to our wires for filing to the members and this office also receives the Canadian Press reports in New York which are immediately delivered to us, and to all of our wires for delivery.

Q. Now, when you say that the Canadian Press mantains an office in your building, do you mean, they have their own employees here?

A. Exactly.

Q. And paid by them?

A. Exactly.

Q. Any connection at all with you people?

A. None whatsoever.

Q. The only connection being their contractural arrangement?

A. The only connection we have is to deliver our news reports to the office of the Canadian Press. From that point forward there is no connection, no relationship.

Q. Now, do you have your employees in the office of the Canadian Press?

A. It is not necessary, Mr. Moscovitz, because the report of the Canadian Press is delivered to their office in New York and then it is handed to us right in our office here.

Q. Now, where are the Canadian employees who give you this news situated in New York in relation to your people to whom they hand the news over?

A. They are immediately adjacent to our news room.

Q. The same floor?

A. Yes.

Q. Work in the same office?

A. Yes, they are on the same floor.

Q. And do any of the people employed by the Associated [fol. 106] Press here work in the office of those employed by the Canadian Press?

A. No.

Q. And as a physical matter, when the news comes in from Canada and the Canadian employee gets it, does he carry it over to your people, or what happens?

A. No, it comes in by prints.

Q. What do you mean it comes in by prints?

A. The teletype—the printer—I don't know how you would describe it.

Q. Ticker?

A. Telewriter.

Q. What is done with it then?

A. That news is subject to the same treatment as any other news of the Associated Press. We handle it on its merits.

Q. Do you have an agency called the Rengo Agency?

A. Yes, that now is not the name, Mr. Moscovitz.

Q. It is not?

A. The fact of the matter is I am unable to pronounce it myself.

Q. Is it described in the directory you have, Board's exhibit number four for identification?

A. Rengo, yes.

Q. What page is it on?

A. The Rengo Agency, page fifty three, fifty four, fifty five, fifty six.

Q. Now, is that agency still in existence?

A. No.

Q. Is the operation in existence with the exception of the change of name?

A. The operation also is changed, Mr. Moscovitz. The Rengo Agency has been absorbed by an agency, part of the name being, Domeii—two other words which I have forgotten, and in this new agency it also has been——

Q. Would you supply us with the exact name of that agency?

A. Surely. In this agency also now has been absorbed another agency in Japan by the name of Nippon—Dempo. [fol. 107] There has been a merger and consolidation and change of name but the Rengo set up, as you see there, has been embraced bodily as it were in the new organization, plus the addition of Nippon—Dempo.

Q. So, now it is a greater organization?

A. Yes.

Q. Is that right?

A. Yes, and is a single agency. The description on page fifty three of the Rengo Agency is as follows: "The Japanese newspapers, like those of Canada, have also organized a co-operative news agency fashioned after the Associated Press. This agency is called the Shimbun, Rengo,—Sha, but it is ordinarily spoken of merely as Rengo. It embraces the most important papers of Japan and exchanges news with the Associated press and important agencies of the world." A. But I am doubtful now, Mr. Moscovitz, whether that is a proper description of it, and I am unable to say because we, as yet, do not know what the official character, what—how this will be organized. We don't know yet frankly, what the new set up of this organization is to be.

Q. But do you have any relationship with the Japanese people today?

A. We have continued the relationship that we had prior to the merger and will do so until such time as we learn what the structure of this new agency is to be and at which time we will determine whether the Associated Press shall continue to have a relationship with it.

Q. So, as a matter of fact, today you are continuing?

A. Yes, we are continuing the old relationship?

Q. The old relationship with the old agency, but under a different name?

A. Yes.

[fol. 108] Q. Under a different name, is that it?

A. Yes, it is Domeii or whatever it is.

Trial Examiner Clark: We will take a short recess.

Recess.

After the Recess.

Trial Examiner Clark: I think we can resume.

Mr. Moscovitz: At this time, Mr. Examiner, I would like to introduce the directory of the Associated Press referred to before as Board's Exhibit No. 4 for identification.

Trial Examiner Clark: It is agreed.

(The above mentioned documented was received in evidence and marked Board's Exhibit No. 4, witness Stratton.)

Mr. Stratton, the witness on the stand previous to the taking of the recess, resumed the stand and testified further as follows:

By Mr. Moscovitz:

Q. Are the divisions set up in Board's Exhibit No. 4 necessary integral parts of the Associated Press administration?

A. I don't understand that question, Mr. Moscovitz.

Q. I mean, it is quite indispensible to the setup, isn't it, and makeup of the adminstration?

[fol. 109] A. No, I shouldn't say it is indispensible. You are referring to the geographical sections of the country designated as divisions?

Q. I am referring to your domestic divisional setup, your administrative setup, and regional setup, and in addition to that the form setup. Now, is the setup as it exists today necessary to the manner in which the Associated Press carries on its present business?

A. Well, the method of geographical divisions that you refer to in the book is the system that the present management has determined upon as the one most suitable to its administration.

Q. And it works as one integral unit, doesn't it?

A. Well, no, it does not, Mr. Moscovitz, for the reason that these divisions are established with a News Editor in charge who has a given responsibility for his division, first, from the standpoint of news, and second, responsibility for his personnel. For example, we will take what is described, I believe, there as the Southwestern Division, with the headquarters of that division located at Kansas City. The News Editor of that division is primarily responsible for the news of the states in his territory, in his division. In Kansas City, and in Missouri and Kansas, this News Editor also is responsible for his personnel. In certain phases of the operation that News Editor has discretionary authority with respect to the handling of the news and the handling of the personnel in his division. The divisional points, of course, dovetail. We try to move the whole organization just into a mortice, you know.

Q. Yes. That is what I was driving at, Mr. Stratton—the dovetailing of these divisions and the offices.

A. It is all coordinated.

[fol. 110] Q. It is all coordinated. That is what I mean when I used the word "integration." You act really one

with the other as you go along to the process of collection and distribution of this class of news, don't you?

A. Yes.

Q. You made some reference before, Mr. Stratton, to certain corporations, British and others, with which the Associated Press has connection. Now, can you tell me whether or not the British Agency is a corporation?

A. It is a limited company. The Associated Press of Great Britain is a limited company.

Q. Limited. So that it is engaged in business as a private corporation?

A. It operates independently. It has its own constitution and by-laws.

Q. Yes. It is engaged in business for profit, is that so?

A. No, sir.

Q. It is not? Is it the same as your corporation here?

A. It can't make a profit, Mr. Moscovitz.

Q. It is not engaged in business for a profit for it can't make a profit?

A. It can't pay a dividend. By its charter it can't pay a dividend nor any moneys that might eventually accrue that would make it possible to consider for dividend purposes. The charter also specifies that such a surplus, if any, must be disposed of not to the advantage of anyone of its associates. For example, if there is a dissolution of the British company, if the time should arrive when there is a dissolution of the British company and there is any moneys available, that money must be disposed of not to the Associated Press of New York, or to any other person individual or organization which has any connection with it.

[fol. 111] Q. But it is a limited organization?

A. That is right.

Q. And are there any other corporations abroad?

A. The fact of the matter is I don't know just what is the status of our Germany company now. The laws have changed so fast over there, and we have been trying to keep abreast with the changing instructions that are governing anyone who is attempting to operate a corporation in Germany. We don't know now what the status is. Whether we would call it a limited company in our understanding, or incorporated, frankly, we don't know.

Q. What other corporations are there elsewhere?

A. None.

Q. Just the British?

A. The British.

Q. And how about the Japanese?

A. Well, I don't——

Q. As you said before, you don't know what the effect——

A. I don't know what the status of that is.

Q. All you know is that there has bee.. a merger, or consolidation?

A. In any event, we wouldn't have anythir.g to do with it along that line any way because our only relationship is purely an exchange of news with that company. The type of company—we haven't anything to distribute.

Q. There is no interlocking of directors between the corporation?

A. None whatsoever.

Q. Has there ever been?

A. No, sir.

Q. I would like to go back for a moment to the Canadian employees who are situated with the Associated Press here. Do you know who pays them?

A. The Canadian Press, I presume.

[fol. 112] Q. Do you know whether or not they receive their checks from the Associated Press here and that in turn is checked off?

A. They do not to my knowledge.

Q. To your knowledge?

A. No, sir.

Q. Would you say, as a matter of fact, that wasn't the situation?

A. It is not likely. I couldn't say definitely because it is not a matter I am acquainted with. But I can't conceive of it.

Q. But you don't know?

A. No.

Q. Can you tell me whether or not any employee of the Associated Press in this country was at any time or is now an officer or a director of the English or Canadian setup?

A. Well, you say English or Canadian setup. They are totally different conditions there, Mr. Moscovitz. The Canadian Press is an organization of its own with which we have absolutely nothing to do as far as the organization is concerned.

Q. You have no connection with the Canadian Press, the Canadian organization?

A. No.

Q. Or with the British?

A. The British organization—the officers of the British Company of the Associated Press of Great Britain are employess of the Associated Press of New York.

Q. I see. And do you happen to know who they are?

A. Yes, sir.

Q. Who are they?

A. The President of the Associated Press of Great Britain is Mr. Cooper.

Q. Is that Kent Cooper, the General Manager?

A. Yes, the General Manager of the Associated Press. The Chairman is Mr. Frank B. Noyes.

Q. And who is Mr. Noyes?

[fol. 113] A. He is the President of the Associated Press of New York. The Vice President is Mr. Jackson S. Elliott, who is the Assistant Secretary of the Associated Press of New York. The Secretary is Mr. Frank H. King, who is the chief of our Bureau, who is Chief of the Bureau of the Associated Press at London. The Managing Director is Mr. Lloyd Stratton, the witness.

Q. You are the Managing Director of the English?

A. Yes. Pardon my smiling, Mr. Moscovitz.

Q. It is all right. I think it is quite remarkable myself. Can you tell me who holds the stock of the British Corporation?

A. The Associated Press of New York.

Q. And who went to Great Britain to set up their organization?

A. Mr. Lloyd Stratton, from the Associated Press, and at the direction of the management of the Associated Press.

Q. As a matter of fact, the English organization and the Associated Press here are really one operating organization; is that not so?

A. No, sir.

Q. One officership organization?

A. It happens that the people just mentioned are officers of the British corporation.

Q. As well as officers of the Associated Press?

A. No, sir.

Q. Where do they differ?

A. The Managing Director of the Associated Press of Great Britain, and the Assistant General Manager of the Associated Press of New York, is not an officer of the Associated Press of New York. Nor is Mr. Frank King, the Secretary of the British Company, an officer of the Associated Press of New York.

Q. Just what is his job here?

A. Mr. King is the Secretary, Chief of the Bureau at London.

[fol. 114] Q. And his position here?

A. None. He is Chief of the Bureau at London. Mr. Elliott and Mr. Cooper and Mr. Noyes of the staff are officers of the Associated Press of New York.

Q. You made some reference earlier in your testimony to weekly newspapers which I don't think I quite understand. Do you have any weekly newspaper members?

A. Oh, yes. The number of them is not great. I don't know just how many. Probably in the neighborhood of twenty—something of that kind.

Q. Who hold regular membership, just as any other members?

A. No, they have qualified for membership to the extent of being in a position to receive sufficient service from the Associate- Press to warrant their membership. For example, a weekly paper may receive a news service only on the day that it publishes. It may receive our feature service. It may receive some nominal department of the organization which is sufficient for its publication needs, you see. Our object in having such newspapers is, as I explained, first, because of their desirability of location, and in many instances of being in a position to strengthen our news coverage where there may not be a daily newspaper, or it may be a sparsely settled location where the daily members have no objection to that weekly newspaper receiving that sort of service it does, primarily for the advantage of the news protection of the Association Press from that newspaper.

Q. Does the method of payment differ for weekly newspapers?

A. The method of payment would correspond entirely to [fol. 115] the amount of service received. It would be no different in its ratio than the regular charge for whatever service they received. Usually a nominal charge. For

example, most of the weekly papers don't have use for other than, we will say, our feature service, which is a type of news that is interesting and important and necessary, but doesn't have the spot-time element in it which lends itself and is suitable for the use of a weekly newspaper could make out of it. In connection with that they might subscribe to the state mat service, which is a service of pictures of notable people in the state.

Q. Who might subscribe to that? The weekly?

A. The weekly, yes.

Q. Is there any association between the state mat service and the Associated Press?

A. Well, the state mat service is one of the services of the Associated Press.

Q. I see. Then, is my understanding correct when I say the weeklies are on exactly the same basis as the daily members except that their amount of assessment is different, depending on these circumstances which you have pointed out?

A. Their position.

Q. Do they pay an assessment or do they pay for the news they receive.

A. Well, anything that a member pays is an assessment, Mr. Moscovitz. For example, if they are receiving news service one day in the week on the day of their publication, they pay in proportion to what the assessment for that service should be.

Q. Do they receive the same privileges as daily members?

A. Usually to the extent of being in a position, if they [fol. 116] wish, to have access to Associated Press news that has been printed by a member. For example, you know a great many weekly newspapers make up their sheets by clipping. That is, they will clip stories, an Associated Press story, for example, that has appeared in the daily newspaper which hasn't gotten into the weekly newspaper territory, and it is a story which he thinks is worth while reproducing in his paper. He has the privilege of clipping that story if he desires, which is not a privilege which any one who is not qualified for service can use.

Q. What is the state mat service?

A. For example, in New York state we have many prominent men, and it is not unlikely that your picture, Mr. Moscovitz, as a man who frequently appears in the news, is a

desirable picture for the newspapers to have in their plants. So we take such photographs, make mats of them, and distribute them to the members in mat form, to have available in their morgues for use whenever something comes up that makes that man's name news or which ties in with some current development.

Q. Are these services in existence throughout the country?

A. We don't have them in all states. It is only in the states where the members have authorized its production.

Q. Do you know how many states have it?

A. Oh, roughly, thirty.

Q. Thirty?

A. I should say maybe a little more than that.

Q. How is that all hooked up with the New York office?

A. In no manner.

Q. No manner?

A. No.

[fol. 117] Q. Does it hook up just with the particular states?

A. It is operated in the particular states by the Control Bureau in that state. Some of them will send the prints —I mean, you know the prints, the glossy prints—they will send prints here to New York for the purpose of making the mat. That is done where we have been unable to find a suitable manufacturing plant in that region. Some states send their material here to be put in form and the mats made and distributed to the subscribers in their respective states.

Q. You have occasion to call upon various state agencies for such pictures as they may have from time to time?

A. If they operate it, build it up, gather the material, and from a manufacturing side we are not able to do it in some of these states, they will send the material here to be manufactured, that is, to be put into the mat form and sent back to the states. In other places we have found a suitable manufacturer locally where that work is done locally.

Q. And you know, as a matter of record, what exists in all these state services, don't you?

A. I don't believe we do, Mr. Moscovitz. I know there are some states that I don't know—we don't know who is in that list at all.

Q. There are assessments made for this too?

A. Oh, yes.

Q. And assessments are payable——

A. The state service—the state mat service is authorized by the members in that state, and the cost of it is arrived at on the usual basis of assessment, and they are charged proportionately to the cost of the delivery of that service.

[fol. 118] Q. Assessments are payable to the Associated Press?

A. Right.

Q. Now, all of the questions that I have been asking you so far and will ask after this, Mr. Stratton, are questions which go to a period, we shall say, from the date of the directory which has been introduced in evidence, which is Board's Exhibit No. 4, to the present time. Is that correct?

A. You mean your questions will be?

Q. Your answers to my questions would cover that period. Is that correct?

A. Well, we can proceed with that understanding. If there is some incident where I think you should be differentiating, or I don't understand, I will so note.

Q. That has been the situation for the answers that have been given so far?

A. Well, I couldn't say to that, Mr. Moscovitz. I have forgotten what a lot of these questions were.

Q. Well, in so far as the directory is concerned, which is the only time when this particular question would arise, you would say that is true?

A. Yes. The question you just finished?

Q. Yes.

A. Yes.

Q. Now, I will have to have you explain, Mr. Stratton, if you will, the manner in which the Associated Press carries on its business in New York of collecting and transmitting news. That is actually the physical manner in which the business is carried on. You might point out what sort of a physical layout you have here, what type of wire setups you have, what departments you have, and how the entire operation is carried on.

A. You mean you want me to undertake to separate the New York office from the system?

[fol. 119] Q. Well, I want you to undertake to describe the New York office physically. Point out the departments

which might be in existence there, and then describe how your business is conducted.

A. Well, administratively—shall I start——

Q. Administratively. You can start any way you think would be best.

A. Well, we have a General Manager, an Assistant General Manager, another Assistant General Manager, and an Assistant Secretary, Treasurer, all being officers with the exception of myself, Mr. Stratton.

The General Manager is, by resolution of the Board of Directors, authorized to conduct the news service and engage the personnel, always subject to the direction of the Board of Directors. As I think it is known but perhaps I should restate it here, the Board of Directors of the Associated Press is the supreme authority. Outside of the specific authority which has been designated to the General Manager, in all other respects the Board of Directors controls the Associated Press. It is the duty of the General Manager, as I have said, to conduct the news service and act as the executive head of the organization. The Assistant General Manager does just the sort of things that an Assistant General Manager does in a company, namely, they are to assist and serve and occupy himself with such duties as the General Manager designates. The second Assistant General Manager is in charge of the Traffic Department.

Q. What is the Traffic Department?

A. The Traffic Department is the department of the organization which handles the communications, the mechan- [fol. 120] ics of our department, all features of the business that involve delivery of service.

The Assistant's Secretary's position is exactly that of an Assistant Secretary. He handles all the corporate business or such duties that financially fall within the position of an Assistant Secretary of a corporation.

The Treasurer is self-identified, I believe.

In the News Department, in the New York office, we have, at the present time, three Executive News Editors. One Executive News Editor who is in charge of the day's news report.

Q. Now, is the News Department the Editorial Department?

A. That is right.

Q. That is the editorial employees' work; is that so?

A. Any employee who is not in the Traffic Department is in the News Department.

Q. And they are editorial employees?

A. Yes.

Q. I see.

A. Then we have an Executive News Editor in charge of the night report. And then there is an Executive News Editor who is in charge of the week-end service, which is a service especially prepared and designed for the Saturday afternoon and particularly Sunday morning newspapers.

Assisting the Executive News Editors, on the general desk, on the day side, we have supervising editors, day and night. Then we have the City Department, called the city desk, which is composed of reporters and rewrite men, whose assignments are to cover the news, write the news, prepare it for its use in the service. We have the Sports Department which is supervised by a Sports Editor, also covering three shifts, day and night. We have the Finan- [fol. 121] cial Department supervised by an executive, and desk editors. We have the news photo service which produces the news pictures. We have the feature service which produces the service that is sent by mail rather than wire, of which department there is the news picture mat service which sends news pictures in mat form. Then we have the Filing Editors who are the editors assigned to the respective circuits, serving the news to the member newspapers and Bureaus on the respective circuits. The Filing Editor is sitting at a desk, receiving the copy as it comes in, and handling the copy that comes to them for exchange on the wire, whose function is to editorially supervise the news report for his circuit that will in its total represent the balanced news report of the day.

Q. Do you have a librarian or a library?

A. We have a morgue, a library, which is for the purpose of keeping, maintaining of records, anything in the day's news which may subsequently become of value for its reference purpose.

Q. Do you have a library in any other division of this department?

A. The news photo service, of course, has its library, you might call it, of negatives, all classified and filed, also for

the purpose of subsequent use as reference. The Treasurer——

Q. Before you go to the Treasurer's office, the Executive Editors and Sports Editors, and so forth—do they supervise the news work of the entire country?

A. No. I am speaking now only of the New York office, Mr. Moscovitz. You asked me to break down the New York office.

Q. Yes. Well, I mean the Executive Editors who sit in the New York office and who handle the copy—don't they, [fol. 122] as a matter of fact, supervise the news work of the entire country?

A. Well, I would say in a theoretical capacity, because practically the news is supervised in the first instance by the Bureau in charge of the state or the source from which that news first comes. For example, the Kansas City Bureau is in a much more advantageous position to scan and to supervise and to correct, where necessary, or to rewrite, where necessary, to kill or to discard, than the New York office, and a great deal of the news as it comes into the New York office is nothing more or less than news delivered to New York which has served its purpose and it is available. The New York Executive News Editors have a theoretical supervision over the general service, but in practical application it is only in instances where there appears to be from the standpoint of polishing it up, or recoordinating it, or in some manner giving it a better face or a better appearance, that there may be a suggestion from the New York Executive News Editor that such and such be done with a story.

Q. How about censorship?

A. Censorship? What application?

Q. Well, suppose a story came in from Wichita, Kansas, for example, which was libelous. Would the Executive Editor here do anything about it?

A. If the ordinary functions of the system has worked, the News Editor in Kansas City has stopped that story. If on those rare occasions, and indeed they are rare, that something has gotten through Kansas City as well as Chicago and a half-dozen other points between Wichita and New York, such a story has gotten through, then if it is felt it is libelous in character, or for any other reason it [fol. 123] seems to be improper, promptly the Executive

News Editor will so state. But it doesn't always follow that it is observed, because there are many times conditions and circumstances at the source, the fountain head, the origin of the news, features that we don't see here.

Q. Well, as a matter of fact, would you say the Executive Editor's position is one which is completely supervisory over the entire system?

A. Their purpose is as supervisors, oh, yes.

Q. And the responsibility is theirs?

A. No.

Q. Well, now, how would you work out your responsibility for ultimate——

A. Well, in the same manner I described a moment ago. The prime responsibility, taking your Wichita case, for example, the primary responsibility there would be the News Editor at Kansas City, in the even- it was a story for which they would be censored.

Q. But take the ultimate responsibility.

A. Well, the ultimate responsibility, yes, comes back to the Executive News Editor; that is, he is supposed to be in a position to supply a general viewpoint, a general judgment on a situation.

Q. Now, can you tell me, Mr. Stratton, whether or not the Filing Editor supervises all along the circuit?

A. The Filing Editors are all supervised in every instance, yes.

Q. And is there an Executive Filing Editor?

A. Well, in New York, again, either the Executive Editor who is on duty, or one of the supervisors also on the general desk—we should say it is a part of their responsibility to supervise the Filing Editors in the same manner they supervise the product, the output of all employees.

[fol. 124] Q. Now, you were going to describe the Treasurer I think, before I interrupted you.

A. Well, the Treasurer's office, I think, also explains itself. It merely handles the finances and the accounting, the employees' sick benefit, disability, the pension fund, and such matters as that.

Q. That is your physical set up, is it?

A. Roughly.

Q. Now that it is there, how does it work?

A. Well, if you will indicate to me, Mr. Moscovitz some place to penetrate it, I will know better how to——

Q. Well, take first a description of the type of instrumentalities in use by the Associated Press. Answer that question first. What physical instrumentalities are used by the Associated Press?

A. What physical?

Q. Yes, I mean, do you use wire, do you use the telephone?

A. Oh, we use transmission—that is mechanical rather than physical. We use on occasion any means of mechanical transmission of distributing the service. I think probably I should go into that by being as specific as I can, by an example. For example, we are having a hearing here which is considered by some of us sufficient to be reportorially represented in a news service. We have a reporter assigned to this hearing. He will, perhaps by telephone, call in to his office a resume or a rough outline or his notes of what in his judgment represented the news of this hearing. He may, on the other hand, be close enough to his office that he will return to his office and write a little story. If it were a reporter for the Associated Press in the New York office, he might use the telephone in calling our city desk and giving the city desk, as [fol. 125] I say, this resume of his notes, and the reporter at the city desk would put that into story form. That story then would be distributed to the general desk and to the various filing desks in the office to take its place in the hopper of the news as something suitable for transmission to members of the Associated Press.

Q. What is a hopper?

A. Well, a hopper is a reservoir in the offices of the Associated Press of New York which contains anything from 15,000 words up to 200,000 words of news, handled in 24 hours. So this little piece of news I am following through here takes its place in this reservoir of news that is there waiting to be inspected, read, offered, and ultimately finding its place in the news available for distribution to the service.

Q. Now, does all news that comes into the Associated Press reach this reservoir?

A. No, I shouldn't say that it does, Mr. Moscovitz. Not in the New York office, because there is a great amount of news in the respective states, for exemple, which is of strictly state interest, and its only purpose is for state distribution.

Q. Your reservoir is really for state use?

A. No, I am answering your question whether the reservoir receives all the news of the Associated Press. No, it does not, not by any means.

Q. What news goes into the reservoir?

A. Well, in the New York office, all the news from Europe, for example, comes into the New York office. It will be there for consideration. All the news that comes in on the incoming wires from the various parts of the country, the south, northeast, and the west. That repre- [fol. 126] sents only the news which the filing points or our Bureaus in the distant parts of the country have determined is news of sufficient value for publication in the east. You see, basically, the Associated Press is an exchange of news system. It is incoming and outgoing, incoming and outgoing, day in day out. Mr. Jones out at Decatur, he has a piece of news that Chicago may want, or New York may want, or Atlanta may want, and Mr. Paul down at Atlanta may have a piece of news that would be particularly good for South Carolina, or Tennessee, or Georgia. One wire will bring in news, another wire will take news out, the purpose being to let the members of the Associated Press in this part of the country receive the news from sections of the country, in, we will say, the west here, and the members in the western part of the country being in a position to receive the news of the newspapers in the eastern part of the country. Give and take, back and forth.

Q. Well, do you members throughout the country collect news which finds its way to the desks of other members for use? How is the news collected?

A. Well, in Freemont, Nebraska, there may be a story which is of importance sufficient to transmit to all members of the Associated Press of the United States. Our member at Freemont writes that story as a part of his obligation for the benefit of the other members of the Associated Press. He will send that story in this particular case to Lincoln.

Q. That is Lincoln, Nebraska?

A. Lincoln, Nebraska. Lincoln will receive the story and if it isn't in the best form possible, or if in all respects [fol. 127] it doesn't represent the type of story that is suitable for the Association Press, that is the first place that the story begins to receive the attention, if any, that it re-

quires. Lincoln then files it on another wire which in this case will go into Chicago, and there Chicago has it available for relay to the service at large, either to the east, the south, the southwest, or back to the far west. At the same moment that this story is originating in Freemont, Nebraska, a similar story may be developing at Corning, New York, we will say, and there the member does the same thing. He files his story on the state wire, which in this case might be handled either at Albany or New York City, and it would receive any attention necessary, and then it would be sent back into the service, just in the same way that we had received from the other direction of the news from the Freemont member. Taking just one story, if it is possible, to represent what is manifolded hundreds and hundreds of times every day all over the country, that is the method of a member's news being made available to another member in another part of the country.

Q. So that, members throughout the country will collect news which eventually finds its way to the desks of the Associated Press in New York. Is that right?

A. No. No, there is a great amount of news, Mr. Moscovitz, that never gets back here because it is not of interest to the east. Its interest may be strictly state, or it may be strictly regional, or it may be of interest to two or three states. In many instances we have copy that is of little interest outside of its local territory which never gets be-[fol. 128] yond the confines of the territory for which that story has interest.

Q. But, as a matter of fact——

A. All we see in New York, Mr. Moscovitz, is the news of the United States from the south, the southwest, the west, and the northeast, which our members in our Bureaus feel represents the cream of the news of that day in its importance and in its balance, the context of that report for this part of the country. You take Kansas City, now, it is a different story, first, because of its location. It is in more or less the hub. Kansas City is geographically in a position where it receives a great deal more incoming than outgoing service than does New York, because it is the point between the west and the east and the point between the south and the north, and a great deal of the news will come in and out of Kansas City that is serving purely a regional or state character that we do not get back in New York.

Q. All the news that passes through the hands of the Associated Press in New York finds its way to states other than the state of New York, doesn't it?

A. May I have that question again, please?

(The reporter read the question.)

A. No, no, by the same example that I just gave, Mr. Moscovitz. For example, there is much news in the east, and much news in New York state, which is handled by our editors and by our staff in New York, that doesn't get to other parts of the country.

Q. Would you say that the greatest percentage of your news is news which finds its way to states other than the state of New York? I mean, there is constant transmission [fol. 129] throughout the country, is there not?

A. No, I shouldn't say that either.

Q. You wouldn't?

A. No.

Q. Would you explain to me then exactly what the situation is as to that?

A. It would be very hard to try to give you any averages because a thing like that would take a lot of study, and I don't know that it has ever been done. There is no need for it. But if I can make you see that New York is in a corner of the country. Geographically we are in a position removed from the vast part of the country wherein so much of our news originates, so that we receive here news only which represents the best of what this vast part of the country has available. The New York office will receive the foreign service in a volume that is greater than will be received at any other point along the line probably, because here in New York there is a large amount of our foreign news which is of appeal and has an attraction to newspapers in the eastern seaport that there isn't that same interest in newspapers to the west. So we have to consider in New York only the news that comes to New York from the northeastern part of the country, which is our New England section, and New York state, and a part of Pennsylvania are the only regions that contribute their news report to the New York office.

Q. How about your foreign territory?

A. I mentioned that first. I said we have the foreign service.

Q. All right. In all other respects it is all outgoing, you see; that is, we are in a position of serving outgoing with a less territorial coverage than if we were geographically located in a different position. We receive from the vast [fol. 130] parts of the country, yet here only we receive only from the very small corner of the country incoming.

Q. On page 1 of Board's Exhibit No. 4, there is a description of the leased wiring, in which it is pointed out that the total mileage of the leased wires used by the Associated Press is approximately 250,000, and from various points along the trunk lines reports are sent to adjacent cities. Can you tell me whether or not there has been any change in the approximate mileage of leased wires given here that you use?

A. Mr. Moscovitz, there was one thing there that I think bears explanation. It is understandable to the people in our business. By useage, we refer to leased wires. It is purely a trade reference. In fact they are not leased wires. To that extent I should say that the proper definition would be that which it is, a special service contract. We don't lease wires in the sense that there may be that meaning. What we do is that we have special service contracts with certain of the communication companies which are nothing more than a contract to pay a certain amount of money for a certain period of service which say they will render those facilities for our use.

Q. The New York office uses the word "leased."

A. Yes. I say that because there may be some misunderstanding of it being a leased wire. It is not a leased wire in the sense that the average person will mean "leased."

Q. With whom does the Associated Press enter into contract here? The A. T. & T.—the American Telephone and Telegraph?

A. We have special service contracts for service with the [fol. 131] American Telephone and Telegraph Company, the Western Union Telegraph Company, and the Pacific Telephone and Telegraph Company. I think that is all.

Q. Those three. And you call it a special contract for use, or a contract for special use?

A. It is a special service contract. That is the proper definition of it. That is the definition that applies in the contract.

Q. Does it give exclusive use of the wire?

A. It gives us the use of wires which the contract requires. These communication companies must make available to us for use.

Q. Constantly open?

A. Constantly open in what way?

Q. I mean subject to your own operation of them. I mean are they operated right from your own plant?

A. Well, we don't operate the wires, Mr. Moscovitz. We have nothing to do with the wire itself. The utility maintains its wires and keeps them up. Our only connection with the wire is at the terminal points to which we in some instances have our own equipment attached for purposes of our own use. But we have nothing whatsoever to do with the operation of the wire at all. They are——

Q. They are operated by the utility itself?

A. That is right.

Q. But it is an exclusive contract in so far as the use is concerned?

A. The word "exclusive" I don't believe applies, if I understand what you mean. It just means that we have contracted the telephone—or that the telephone and tele- [fol. 132] graph company has contracted to give us a certain service for a certain period of time for a certain sum, and it is up to the telegraph company to have that service available there for our use. Now, you say exclusive, only in the sense that some of the other agencies have similar contracts. Well, they might—I couldn't say it is exclusive for it is the kind of service that is available for any one who is in this particular business.

Q. And this news that comes in and goes out comes in from points outside of the state of New York and goes to points outside of New York is carried by this wire?

A. Yes.

Q. So that, what you really have there in effect is a constantly moving overhead railway, would you say?

A. Oh, no.

Q. Well, I mean the news is carried by wire just as any other product might be carried by some other conveyance; isn't that so?

A. No. There are a great many intermediary conditions there, Mr. Moscovitz, that have very sharp application.

Q. Well, now, take a case of a murder in San Francisco and carry it through for me to New York and to points

outside of the state of New York after it reaches here, and show me the intermediate steps that take place.

A. Well, you say a murder in San Francisco?

Q. Yes, some very important murder.

A. We could take something more pleasant.

Q. Well, take an important strike. Take the Longshoremen's strike.

A. Take a good sports event.

Q. Let's take the Longshoremen's strike out in San [fol. 133] Francisco, California, where the entire seaboard is tied up and there is no movement of any traffic, and the story is relayed here, being of great significance to the Atlantic seaboard. Now, point out to me how that is handled and the intermediate steps you referred to.

A. Well, in the recent strike in San Francisco, various men were assigned to various angles of it. We will take the man who was at the waterfront who called his story by telephone, we will say, into the city desk, into the San Francisco Bureau, which was treated in the manner I have previously described. The first thing that that story gets is the best judgment of the city editor that what is said represents the facts and if there is anything in that set of facts which requires equal treatment from another source of that story he gets that first. The story doesn't go unless he has. When the city editor writes the story it will go to the wires available for state of transcontinental distribution. It will come properly—we will assume that it has been properly prepared, that its formula is all right It will take in its route to the east the communication line that presently terminates in Kansas City. It is taken off the wire at Kansas City, read by the filing editor first who is on that incoming wire and immediately by the news desk.

Q. Why is it taken off the wire at Kansas City?

A. Well,——

Q. I mean why doesn't it come directly to New York?

A. It is a mechanical condition, Mr. Moscovitz.

Q. Is that true in all situations?

A. Well, I couldn't say outside of our own.

[fol. 134] Q. I mean in all Associated Press situations where news originates in California, would it mechanically go over the wire there?

A. In our present mechanical setup, yes, the Kansas City Bureau is a relay point between the west and the east.

Q. And how much time is consumed in such relay?

A. Oh, it can be anything from ten minutes to eight hours, all depending, as I have said before, on the importance of the message itself.

Well, to pick the story up. This story reaches Kansas City. It is immediately read, and for improvement, if possible, or if it is correct, or if in all respects it represents the story as it should appear. It then is available to the—what we call in the east the wire editor out of Kansas City, who files the wire to the east. That editor is in position to do whatever further it is necessary to do on that story to make it conform, to make it fit in with what he knows to be the news condition of his wire, of the copy that is available at all these intermediary points incoming and outgoing. He sits in a place, in other words, to make that story fit if it is usable into the volume of the report, into the balance of the report that is presently waiting him to handle or to make allowance for receipt of similarly important news coming back from the east. It is filed on this wire which comes directly into the New York office.

Q. From Kansas?

A. From Kansas City. At the same time it is copied at some half-dozen other points between here and Kansas City because these particular circuits of course touch all the important cities on what we describe as our trunk circuits. For example, that story is copied at Chicago, [fol. 135] Cleveland, Pittsburgh, Philadelphia, Washington, and Detroit as it comes east at the same time that it is copy in New York. Now, here is the end of that leg of the story. It is taken off here, it is again subject to the treatment that is necessary, one, from an editorial standpoint, or two, from the standpoint of it being too much, or it needs trimming, or it needs fitting into conditions which another filing editor in this office must take that up to handle it on into New England, for example. It may not get to New England.

Q. Then it may be transmitted from New York on to New England?

A. No, this story is incoming.

Q. Well, after it gets to New York what happens to it after you alter it and change it?

A. If it is necessary to give it any treatment, why that again is done here, and then it is available for filing into

New England on the same circumstances that the man had it before him in Kansas City, to judge and determine its filing use.

Q. It may go to points other than New England from here? I mean, New Orleans, for example, of Maryland?

A. Well, that is possible, Mr. Moscovitz, but in the mechanical setup of the thing it is likely that a story worth while for the south would have found some more convenient way of filing. For example, we have three or four methods of reaching the south from beginning points over the service.

Then I could break it on down further at these trunk Bureau points where this piece of news is received. For example, Salt Lake City. It is taken off the trunk circuit [fol. 136] there, and then at Salt Lake City we have the state wire which serves the papers in that particular region. Then the story there is subject to use or non-use again on still another facility. And in some instances there is still a secondary Bureau to which that story is delivered and it has still another facility.

Q. I will go into the question of the description of your wiring systems just a little later. Right now you might tell me what the basis of assessment to members is in the collection of this news at various points.

A. What is the basis of assessment?

Q. Yes. How does the Associated Press determine the assessment?

A. Well, the assessment is determined on the basis of population. That is the primary—its population as given by the previous census is taken as the figure on which to determine the basic assessment of a paper in a town of that circulation, arrived at by equitable and mathematical formula which the Traffic Department of the Associated Press has adopted and applied ever since the Associated Press was organized.

Q. Doesn't it depend on circulation?

A. No, population.

Q. Population entirely?

A. Population entirely is the basis.

Q. Is there any difference when there are other newspapers there using the service?

A. Those things all enter to the degree that the assessment is shared or accepted. For example if we have three

newspapers in New York City receiving the Associated Press at the equitable assessment, if one of those newspapers should for any reason be removed from membership, [fol. 137] then it would be up to the other two remaining members to absorb the assessment of the third member. You see, the assessment is established for the city and that assessment must be paid in the ratio of participation by the newspaper members of the service in that city.

Q. And that bears the expense of collecting and sending the news, is that it?

A. The assessment covers all elements involved in the collection, delivery, and distribution, or, if it is a case where they are subscribing to the feature service or one of these mat services, of course that is extra. Assessments determined include all services to which the newspapers subscribe. They elect to take whatever service they desire. Some of them receive their service by telephone. There is a news report that is read to them by telephone in one or two or three intervals during the day. Some small newspapers receive it by overhead telegraph. That is, we will skeletonize it very briefly, give them the highspots of the news of the day in 500, 600, 700 words, and we will file that by commercial telegraph to the member, which he receives in that form. Overhead, we call it. Then there is the opportunity of having their printer deliver by printer, and then when we get into printer service there is one wire, two wires, three wires, sometimes in some instances four wires, all carrying extra or additional or supplementary tips and amounts of service which the member can subscribe to if he elects.

Q. So that, your New York office use the following instruments: your wire, is that right?

A. By printer circuit.

[fol. 138] Q. I am talking now of the manner of receiving and transmitting news. I mean you use wires.

A. Oh, yes.

Q. Telephone?

A. Yes. And cable.

Q. Cable. What else. The radio?

A. The radio outgoing in some instances.

Q. Do you ever have a situation where you get something in by wire and shoot it out by radio?

A. It is usually in a case of emergency, Mr. Moscovitz.

Without exposing too much of the trade secrets of the organization, I should say that the Associated Press hasn't used radio a great deal in news dissemination. We still are staying with cables and the printer circuits, standard lines.

Q. What are your exchange contracts with other, with foreign countries? Or your reciprocal agreements. Are they one and the same thing?

A. It is an out and out exchange of news contract, Mr. Moscovitz, providing one and only one thing—the availability of their news report and the availability of our news report to be delivered at places designated. For example, well, take our Reuter News Agencies. The Reuter News Service makes its news report available to us in London.

Q. Where is the Reuter? Where is it located?

A. London is its general office. Reuter makes its news service available to us in London. We make our service available to Reuter in New York.

Q. Do you have reciprocal wire arrangements?

A. Pardon me what is the meaning of the question, Mr. Moscovitz?

Q. Well, you have interchanging wire arrangements with news agencies. There is some reference to it in your direc- [fol. 139] tory, as I recall.

A. I don't quite fix it in my mind.

Q. Do you have an interchange of wire arrangement? Are there interchanges of wires?

A. My disposition is to say no, Mr. Moscovitz, if I understand the meaning of your question. You mean do we have wires going into Reuter's for example, or are we trading wires?

Q. Do you have any situation where you both use the same wire?

A. Oh, no. No.

Q. Do you have a situation where you trade wires?

A. No, sir. No, sir.

Q. Well, is the situation such that all wires that you use are your own wires, under contract, or the wires that you have under contract?

A. That is the only service.

Q. You don't use any other wires?

A. We don't use any wire except that for which we are contracted.

Q. That is in all your operations?

A. Yes, even abroad.

Q. Even abroad?

A. Yes, we are just like any other customer when it comes to doing business with the utility company. We are in the same position.

Q. Well, does Reuter pay the Associated Press for its news?

A. No, sir.

Q. Is that an interchange of news solely?

A. Yes, wholly——

Q. That has a-ways been so?

A. As far as I know it has been so.

Q. You don't know whether——

A. That will go back a great many years. I don't recall that there has been any change.

[fol. 140] Q. According to the testimony which you have already given, would you say that the news comes into the New York office from all over the world, from all points in this country, and in turn goes to all points throughout this country, either directly or indirectly?

A. Would I say that all news coming into New York?

Q. Yes.

A. In turn goes to all other parts of the United States.

Q. Yes.

A. Oh, no.

Q. Would you say that news which comes in from foreign points goes to all points throughout the United States?

A. No, sir, I couldn't say that, because we don't know what happens to a piece of news once it reaches Kansas City, because then it is up to their judgment as to whether it should be carried.

Q. I am talking about the Associated Press officer here in New York. I mean it has some control oer the news it gets whether it be a foreign point or some point outside of this particular state, hasn't it?

A. There is the foreign news coming into the New York office. Now under some circumstances, it may not get out of the New York office at all.

Q. Well, is that the general——

A. (Continuing) It may be delivered locally.

Q. Is that the general situation?

A. No, I am beginning with that point forward. Another story may be suitable for distribution in New York or New England only. Another story may be suitable for distribution in the south, or the southwest only. Another story may be suitable for certain interior states only in which event it [fol. 141] will be filed west. Now, the oustanding story, the big European story—well, take the German Government's latest phase of their—well, their reoccupation of the Rhineland country. Now, that was a story that would go everywhere. I think I can say that safely because I don't believe any editor in the Associated Press in any part of the United States would stop it. I think that story would be delivered all over the country. It would be issued from New York. But when you get away from the outstanding, unquestioned news stories of general value, then I would have to break it down, because it gets into everyone's hands as to whether it is of value there or isn't. We don't know. Many times we will start it from New York, but where its ultimate destination is we couldn't tell, for it must take its place in this huge exchange of news on its merits. It may get into Ohio. This story that gets into New York may get into the Bureau at Columbus and die there because that particular piece of news won't be of any interest at all.

Q. But it will leave the Associated Press here in New York on its journey to points outside of the state of New York?

A. Oh, yes.

Q. After it reaches one or more points outside of the state of New York it may die or it may not die. That is something you have no knowledge of. Is that right?

A. When it leaves New York it must take its place in the news handling of the day.

Q. All right.

Trial Examiner Clark: I think we had better suspend now to two o'clock.

[fol. 142] (Whereupon at 1:05 p. m. the hearing recessed until 2:00 p. m.)

(Hearing resumed pursuant to recess taken at 2 o'clock P. M.)

LLOYD STRATTON, the witness on the stand at time of recess, resumed the stand, and continued his testimony as follows:

By Mr. Moscovitz:

Q. Mr. Stratton, there was some reference made this morning, to Mr. Noyes' connection with the Associated Press here and in Great Britain?

A. I am glad to make any correction that may have been due to a misunderstanding of your question. Mr. Noyes, as I said, is chairman of the Board of Directors of the British company. Mr. Noyes, of course, is president of the Associated Press of New York and a director of the Associated Press in New York. Does that answer it?

Q. He is a director in both corporations?

A. That's right, yes.

Q. There was also a reference made to an office elsewhere in New York State. Now, there is an Albany office of the Associated Press, isn't there?

A. Yes.

Q. And the Albany office is considered an important office?

A. Yes, the Albany office is the supervising office for the service within New York state. We have another office in Buffalo which reports to the office at Albany.

Q. Is the Albany office the one which distributes that [fol. 143] news which is confined to the state of New York?

A. No, any news, Mr. Moscovitz, that would develop through the Albany office would be distributed in accordance with the merit and value of that news, not necessarily within New York state alone, any more so than news from any other part of the country.

Q. Well, does the same practice as to the dissemination of news apply to the Albany office as does to the New York city office?

A. The same practice of——

Q. Of dispatch of news, receipt of news, dispatch of news?

A. The system broadly operates the same in any office, Mr. Moscovitz.

Q. Can you tell me, Mr. Stratton, how many words, approximately, come in and go out on an average day in each

of the more important offices including the New York city office of the Associated Press?

A. That is difficult to answer accurately, Mr. Moscovitz, for the reason that we don't know what may be the incoming and outgoing news reports. For example, in Columbus, Ohio. All that we would know would be the amount of news which entered the Columbus Bureau on the trunk circuit between Kansas City and New York.

Q. Well, Mr. Stratton, Board's exhibit number four, which is the Associated Press directory, paragraph four, gives a statement as to the annual aggregate revenue, and this even goes on to say, "While the number of words daily received and transmitted at each of the more important offices is over two hundred thousand or the equivalent of one hundred and twenty five columns of the average news- [fol. 144] paper". Do you have any reason to dispute that fact?

A. No, I have not. That apparently was arrived at after a study and an approximate average at least of what is the movement of the report and the Bureaus at which that report was developed from.

Q. Now, your testimony is that the speed with which news is transmitted from point or origin to point of final destination depends upon the circumstances of a particular case, that is, the interest of a story?

A. The outstanding character of the event itself normally determines the speed with which—we make an effort at least to deliver that story, oh, yes.

Q. And would you say that I am right in understanding your testimony that there is a constant movement of news in and out of the Associated Press offices at New York?

A. We have, let's see, what is the word—we have idle time to a small degree on the circuit, but over far the greater period of the day, the circuits are in operation. There is movement of news.

Q. And what alteration, if any, is made in news that comes into the New York office before it goes out?

A. Well, a great many things can happen to it, Mr. Moscovitz. In the first place, it may be spiked, killed, immediately, not moved at all.

Q. Well, would you do this, would you take the Hauptman story, for instance, which was a story of considerable public interest, and explain what happened to that story?

A. The best I can do would be to give you the general formula that would apply in the movement of that news, [fol. 145] which would be the same as I described this morning in its essentials.

Q. The Hauptmann story arose in New Jersey, isn't that so?

A. I mean, picking the story up in its place of origin.

Q. That's right.

A. In its manner of being reported, manner of its writing, or at the source, all that sort of thing, then read by the editor who is in charge, and then put on the wire. If it is a story that is worthy of going on the wire, it is put on the wire. After it reaches the wire, it is available to the various points that are on that particular circuit. In this case, I think several periods of the Hauptman's execution, they were filing directly from Trenton on the—on what we describe as the West trunk wires, that is, it was immediately available to all points on those circuits between New York and Kansas City. If it were a story that should not be there, it didn't get out, and we had a few of those.

Q. Well, what would you say the essence of alteration, such as the alteration may be, is speed, accuracy and interest?

A. The primary requirement, Mr. Moscovitz, from any reporter on the Associated Press, is that his story is accurate above all things, speed to the contrary, any other elements to the contrary, the time must be taken and certainly must be had that the story about to be written or about to be delivered is as accurate as it is humanly possible for the man to make it.

Q. Would you say there must be speed consistent with accuracy?

A. Speed following accuracy. I wouldn't even put it consistent with, because that is not the case.

[fol. 146] Q. Although it is one of the important elements?

A. It is necessary to deliver a story as quickly as it is possible in accordance with the circumstances.

Q. Now, in the handling of a story, taking into consideration the criteria which you have established here today, it is of course necessary that the editorial employees, for instance, be on the job constantly, when they are supposed to be there?

A. It is necessary for an employee of the Associated Press just as any other employee.

Q. And your wire people must always be right there on tap, isn't that so?

A. They all have their hour assignments and they are supposed to be there for purposes of duty.

Q. So that it would be a very bad thing for any of these employees to be tardy in their work, isn't that so?

A. It would be a bad thing from the standpoint of the employee, if I understand what you mean by the word "bad". It is something that does not reflect creditibly to the employee, so far as the movement or the handling of the particular business is concerned. We, like anyone else under similar circumstances, must be prepared to carry on in that absence, or that tardiness or in any other manner to overcome any dereliction.

Q. But it is very important that they not be tardy, isn't that so? Or else there would be a decrease in efficiency or it might reflect on the immediate operations, isn't that so?

A. It is important but I can't say it is of vital importance because we are an organization that operates constantly and consistently irrespective of any of us as individuals, and the absence of any of us or the tardiness of any of us does not affect the vitals of the organization at all.

[fol. 147] Q. I suppose it would be a matter of some concern, however, if your wire people were supposed to report at nine and came at ten?

A. It would be of some concern, but we have had that experience in the past and we have managed to perform our duty and our work and deliver our service.

Q. Did you ever have a situation where all of your wire people did not show up on time?

A. I think that is a question that you want me to answer and I would be very glad to if you would make it direct, Mr. Moscovitz?

Q. More direct than I have?

A. Yes. If I understand what you are——

Q. I have nothing in mind except that I am trying to find out whether or not it is important that people be there on time, that wire people be on the job.

Q. This whole thing works in a very ordinary and precise manner? Doesn't it?

A. Oh, yes, of course. As I say that is desirable, unquestionably desirable.

Q. And if it does not happen that the efficiency of the organization would be impaired, there would be some inconvenience and probably there would be some slowing up of operations for the time being?

A. Temporarily.

Q. Yes. Is the office here in New York set up in such fashion as to permit the greatest efficiency and speed in the handling of news? Your actual physical layout, I mean?

A. Let's see if I understand that question. I should say no more, Mr. Moscovitz, than it is possible for people who are in our business to avail themselves of every facility and opportunity and measure that will efficiently result in effi- [fol. 148] cient delivery, distribution of our service to the extent that we should keep abreast of the time in having our office at all times to the highest standards of service delivery. I should say we are, although there may be some question of doubt about that on the part of some others.

Q. Now, I am going to ask you, Mr. Stratton, to bear with me for a moment. I find it important that we go a little further into the question of leased wire operations as we call it and I have before me a paper which I am going to mark for identification.

(Document referred to marked for identification, Board's exhibit number five, witness Stratton.)

By Mr. Moscovitz:

Q. It is a report which we have gotten up ourselves as the result of our own investigation and I will read it to you paragraph by paragraph as I go along and ask you at the conclusion of each paragraph whether or not it is, to your knowledge, an accurate statement, and if not accurate, wherein it is inaccurate, and if inaccurate, how it can be made to conform to the true situation.

A. I assume, Mr. Moscovitz, that it would not be helpful to me in helping you to know that there is no conclusion or any effect that might reduce from the sequence of the paragraphs. In other words, by reading it in total, whether it will be helpful to me, or helpful in helping you to make my answers more satisfactory. Sometimes you read an article, you know——

Q. Would you like to read it yourself?

[fol. 149] A. You may go ahead as you are. I am just raising the question.

Q. I will read it and we will see how we make out?

A. All right.

Q. And if I go too rapidly, stop me. This is a statement of "How the Associated Press Operates its System of Leased Wires", and I have first broken it up into what we call the set up:—"For the purpose of transmitting its daily, telegraphed news report, the Associated Press groups the forty-eight states into regional divisions"—is that correct?

A. No, sir.

Q. Wherein is that statement inaccurate?

A. Because there are many states, Mr. Moscovitz, which are not grouped individually by states, but in some instances there are two or three states.

Q. It says it groups the forty-eight states into regional divisions. Is that correct?

A. Proceed and then I will see.

Q. That is the first paragraph, I will go to the next. Did you misunderstand the statement?

A. It is a little difficult, I will be quite honest with you. It is a little difficult to answer just the form you are interrogating me.

Q. I don't see why—I just asked it to you like a question.

A. All right, sir.

Q. "For the purpose of transmitting its daily, telegraphed news report, the Associated Press groups the forty-eight states into regional divisions". Is that correct?

A. Yes, they are grouped by regions for the purpose mechanically of utilizing the best facilities there are offered, for the purpose of reaching the newspapers we must serve in that particular situation.

[fol. 150] Q. All right. Then this statement is correct with the additional statement that you have made?

A. The way I can understand it and answer it, yes.

Q. Now,—To each of these regions extends a trunk telegraph wire from New York. Within each of these regions subsidiary wires carry news of regional interest.

A. There are trunk circuits between New York and Kansas City.

Q. Well, I think we will describe that element of it as we go on a little later, if you agree that is an accurate general statement.

A. Yes, if I may have the opportunity of interpreting it or elaborating on it.

Q. Would you like to elaborate on that particular statement?

A. I thought maybe the best answer I could make would be by giving you what our trunk set up is.

Q. Is this a correct statement or an incorrect statement?

Trial Examiner Clark: Don't you think we might make more time if you read it over first. Mr. Stratton may not know what you have further on——

Mr. Moscovitz: Whatever you suggest in that regard. It just occurs to me that a statement of these facts to Mr. Stratton are simple enough in view of his own understanding of the situation to permit him to answer yes or no.

A. They are, and I wish I could give you a definite yes or no, but I believe from your study of the thing you realize [fol. 151] what a complicated thing it is and how many times there are differences that should make a full reply necessary by the giving of contributing information, that is all.

Q. Then, if that is all, perhaps you might then supply the contributing information to that statement.

A. Very well.

Q. All right. The statement is "To each of these regions extends a trunk telegraph wire from New York. Within each of these regions subsidiary wires carry news of regional interest." Now is that so?

A. Generally, yes. I will answer it that way.

Q. Now, "The primary circuits—those from New York to the large regions—and the subsidiary—regional—circuits tie in at key points. Most important of these, for example, on the West wire, which is the backbone of the Associated Press, news service across the continent, are Newark, Philadelphia, Pittsburgh, Washington, Indianapolis, Louisville, Dallas, Cleveland, Cincinnati, Chicago, Denver and Kansas City. At these bureau points from which the subsidiary wires operate, world-wide news is shifted from primary to secondary wires to be carried into lesser communities not directly on the main wire." Is that a correct statement of fact?

A. No, Denver is not on that——

Q. Not on that circuit?

A. I can't off hand give you the names of the cities which are on the West trunk circuit out of New York, Mr. Mos-

covitz, but the terminus of that circuit is Kansas City and then at Kansas City the continuance of that West trunk wire becomes the West wire out of Kansas City, and then there are points west of Kansas City which are on the Kansas City-San Francisco trunk circuits. These trunk cir-
[fol. 152] cuits cut right across the country diagonally, or what have you. They are no respector of regions, so to speak. They follow the public utility set up of the regular direction of their channels in these respective areas. We have the trunks which extend out from New York, from Washington, on down to Florida, and then Atlanta. There is a break off which cuts across the south. At Chicago there is another trunk circuit that goes in to the northwest. At San Francisco there is another trunk circuit that goes into Oregon and Washington, north. These trunk circuits not necessarily following regional lines at all, but following the natural line of communication and at the proper points we have bureaus fed by these trunk circuits and it is at these bureau points where the state wires or the regional wires come into existence, feed off the trunk news received from the trunk circuit, you see.

Q. Now, you have day reports, don't you, the Associated Press?

A. For purposes of operation, yes.

Q. All right.

A. I mean what we describe as a news report for afternoon papers?

Q. And that is under a wire arrangement which operates from nine in the morning until four in the afternoon?

A. Well, those are the fixed hours of operation in which period a service is delivered and made available for newspaper publishing in the afternoon field.

Q. I see.

A. The wires, themselves, Mr. Moscovitz, recognize no day, night or early at all.

Q. Is it true that before nine o'clock in the morning, the entire nation is linked by one wire which opens to afternoon papers at two A. M.?

A. No, sir. The entire nation linked with one wire?

[fol. 153] Q. Yes, which opens up to afternoon papers in the morning at two o'clock?

A. No, sir, unless I am mistaken. I don't think there is any circuit that operates—covers the whole nation.

Q. Do you know what the situation is as to wire operations during that period?

A. You mean the number of wires that we have up?

Q. Yes.

A. No, I do not, because it is different in a half dozen different places, all depending on the type of service that has been rendered.

Q. I mean right here in New York, in your own office is there a difference in wire operation during that period as distinguished between wire operation in different periods in the day?

A. There is no difference in wire operations, except in some periods there are more wires up than in other periods and just how many wires there are up between two A. M. and nine A. M. I am not prepared to say because there will be two or three or four different localities served by facilities out of New York which may be running for one hour in one place or two hours in some place else and another will come on at seven o'clock and another at eight. I couldn't answer that.

Q. Do you know whether or not, after four o'clock in the afternoon, the wire set up ceases to serve afternoon papers and starts essentially without change to transmit any reports for morning papers?

A. Well, those are governing hours for the purposes—if you will study the by-laws you will find therein the definition of the hours of publication for evening papers and the morning papers.

Q. Consistent with what I have just read.

[fol. 154] A. And that will give you precisely the hours of service for evening and morning papers, what they are entitled to under the by-laws. Four o'clock ordinarily ends the day report for evening papers, except that between four P. M. and six P. M. an evening paper which wishes to remain on the wire is entitled to receive bulletins, usually for the purpose of their late street editions, and that sort of thing. The day report conclusively ends at six P. M.

Q. And then you go into your night report?

A. Although the night report begins to operate from four P. M.

Q. So you will have one overlapping the other?

A. You will have that spread in there which is an arrangement allowed by the by-laws for the accommodation of the evening papers which publish late editions.

Q. So that there is unquestionably continuous operation, sometimes it may even overlap?

A. For evening papers?

Q. Well, no, sometimes you will have the situation where you are closing up your day work and your night work is already progressing. Is that right?

A. Practically. We now have the morning service and the afternoon service during certain hours of the afternoon working at the same time. That is, developing and moving at the same time.

Q. Are the primary wires the important wires?

A. Trunk circuits.

Q. They are your trunk circuits?

A. We call them trunk circuits, the feeders, the main trunk circuits.

[fol. 155] Q. There are primary wires which emanate from New York. Is that right?

A. Well, they are both beginning and ending you might say.

Q. Now, in primary wires which emanate from New York, you have one which is called the West wire?

A. That's right.

Q. I would just like to read this short paragraph to you which goes to describe the West wire: "Which terminates at Kansas City and is subdivided there into trunk wires to the Pacific Coast and the southwest."

A. That's right.

Q. This circuit is paralleled by a wire reserved to news of financial commodity and money markets which, although controlled in New York, is edited by a special editor. Is that right?

A. I couldn't say it parallels, Mr. Moscovitz, because I am not acquainted with the technical details of the wire. There is a wire set up for the purpose of transmitting the market service, particularly the tables, but I am not——

Q. You don't know whether or not it parallels?

A. No, and I don't know the point.

Q. But you know there is such a wire?

A. There is such a wire.

Q. You don't know that this statement is incorrect on that point, however, do you?

A. I just don't know.

Q. On that one particular point, although you agree with the first sentence?

A. Oh, there is a markets wire.

Q. But you also agree with the fact that it terminates at Kansas City and is subdivided there into trunk wires to the Pacific coast and the southwest?

A. The news wire, yes.

[fol. 156] Q. Now, is there also a South primary wire which goes out from New York?

A. Yes.

Q. Does it enter the deep south to Atlanta and break there into subdivided regional extensions?

A. Yes.

Q. Is there also an East state wire from New York, that is, the wire which serves the state of New York beyond the metropolitan district and all of New England to Boston where it is subdivided into regional extensions?

A. We have the same trunk wire to New England entitled to the same classification which you have placed on the other which we call the North wire.

Q. It is not called the East State?

A. We have the East wire, or the North wire, whichever you like to call it, we call it the North wire, or trunk circuit that serves New England. With that is a "B" wire which picks up additional points on the north or East circuit, whichever you care to describe it.

Q. So that my description of East state would be called by you the North?

A. What you say East state there will really, I presume, rather, is intended to embrace our service to New England.

Q. Now, in New York State is it true that there are also various subsidiary regional wires controlled by the filing editor or filing editors?

A. Well, there is no filing editor in my experience with the Associated Press that ever controlled the wire, as far as that is concerned.

Q. Who would control these wires which are designated as East states, South, "CC" and "C", Pennsylvania and Metro?

A. The general desk controls all filing.

[fol. 157] Q. Now, these wires that I have just listed to you, controlled by the general desk, go out from this point in New York city, do they not, from your office?

A. Those points are filed from New York.

Q. And when you say "filed from New York", what do you mean by the use of the word "filed"?

A. It means the news is placed on that wire, is placed on that wire for dispatch to the bureaus or the newspapers receiving the service on the other end.

Q. Who physically files this news on the wire?

A. The filing editor, that is his function.

Q. Does he himself do it?

A. Yes.

Q. How, physically, does he do it?

A. By handing it to the puncher.

Q. Then there is a puncher that lets it go out, is there—what is a puncher?

A. A man that transmits the news.

Q. By what process?

A. In this case printer's circuit, teletype.

Q. And is there a physical, mechanical set up there for punchers to operate on?

A. Yes.

Q. What is that line?

A. It is like a typewriter.

Q. Individual typewriters?

A. Yes.

Q. Do you have a number of punchers who work them?

A. Yes.

Q. On various shifts?

A. The operating staff have their assignments in their hours, in exactly the same ratio that the editors have their assignments to their side of the work, so that on a day shift there are day punchers, on a night shift, night punchers, and on the early, early punchers.

[fol. 158] Q. Does this editor hand the punchers news in written form?

A. It is in the form, a typewritten form.

Q. And they punch it out?

A. That's right.

Q. And as a result of their physical operations, that news goes out on the various lines?

A. Of course, all these wires too are incoming as well as outgoing, as they are receiving at the same time, as they are sending.

Q. Would the same people be receiving news at the same time as they were sending it out?

A. There is a transmitting machine and a receiving machine.

Q. And do the same people operate the same machines?

A. The same punchers who are handling a circuit permit another puncher along that line, when they have news to exchange, to come in, and then his receiving machine is right next to his transmitting machine, and receives the copy.

Q. Well, does the puncher receive the news which comes in from the same region that it goes to?

A. Yes.

Q. Does he also receive news from a region other than that to which the news is going to be sent?

A. I don't understand you.

Q. If news comes to the Associated Press office from Chicago, we will say, will it be received by a puncher?

—. It will be received on a machine.

Q. But a machine which is operated by this puncher?

A. There will be a puncher assigned to that transmitting unit and to that receiving unit.

Q. This puncher that is assigned to this receiving unit will receive the news?

A. He will permit the puncher at Chicago to come in on [fol. 159] the wire, so he can send it and it will be received on the machine immediately adjoining.

Q. And it is the puncher who sees it when it comes in?

A. Yes, but it is immediately torn off.

Q. By whom?

A. By the messenger boys.

Q. What does the puncher do with the receiving machine then? Then there is no need for him to be there, is there?

A. His primary duty is to punch the copy out.

Q. Transmit it?

A. Yes.

Q. Then why do you say the puncher also operates the incoming machine?

A. Because it is paralleling his wire. For example, if there is an incoming machine and a transmitting machine?

Q. Yes.

A. And immediately along side the transmitting unit is the receiving machine on which appears a copy. Some-

times it is copy that he is sending himself which is run out so he can check his copy. His copy as it comes in from the same points on the circuit he is transmitting to will come in as an incoming piece of news which is made available for distribution in the office to other wires, if they wish to send it out.

Q. Suppose some news comes in from the north on this machine and it is punched in, it is taken off, is it then given to the editor, the filing editor?

A. The incoming news?

Q. Yes.

A. His principal interest in it is seeing that he gets a copy of it for his file.

Q. Then is it possible that that news which comes in from the north is edited and then transmitted to the south by these punchers?

A. No, by the editors.

[fol. 160] Q. By the editors who hand it to the punchers for transmitting. The editors don't handle these machines, do they?

A. Some of them are able to but they don't do it.

Q. These punchers themselves transmit the news by this machine?

A. That's right.

Q. Now, there is from New York, the East wire, is that it?

A. Yes.

Q. Now, would you say, in a description of the East wire, that there is a side circuit of the East State Trunk wire filed in collaboration with it, carrying news of interest primarily to New England and receiving in New York news of general interest originating there?

A. It is a complimentary wire. There are two wires there, except that one is routed a little differently and its purpose is carrying regional news. The other may be a through-circuit carrying news direct. We call it the "B" wire.

Q. There is also a State Wire, is there not?

A. Yes.

Q. Would you say it is a similar wire exclusively for New York State, beyond the Long Island-Westchester area which is also used for incoming news?

A. I am not certain now whether any other points on the New York State Wire, but there is a New York State wire and its purpose is to relay the news received in New York of a general character and to bring into New York the New York State news of interest to the service at large.

Q. These wires that we are describing now are all subsidiary wires, aren't they?

A. I don't understand the word "subsidiary".

[fol. 161] Q. They are not trunk wires, are they?

A. We call them State Wires.

Q. All these wires?

A. There are trunk circuits, regional circuits, State circuits.

Q. And——

A. The trunk circuits are principal feeder circuits that supply bureaus. The trunk wires are arteries, feeder arteries.

Q. Would you call these regional or state wires?

A. State, the one in New York is a State wire; the Pennsylvania is a State wire.

Q. And the South?

A. That is a trunk circuit.

Q. Is there a wire parallelling the South trunk wire, but devoting itself to secondary wires?

A. I think we have a subsidiary wire that operates certain hours.

Q. Is that used also to receive news that is developed in the Deep South?

A. In ordinary practice, it is used for incoming or outgoing, just in accordance with the availability of that wire and the circumstances.

Q. Is there also in this classification a "CC" wire?

A. I don't recognize that.

Q. Well, would this permit you to make the proper designation? It is a circuit, exclusively outgoing, serving only the newspapers of Greater New York, including Brooklyn, and carrying regional news not contained in the West wire report, which also reaches those news papers?

A. That is referring to a Metro. Is that what you mean, the Metro Circuit?

Q. Well, is the Metro Circuit the same as the "CC"? I thought they were different.

A. We have the Metro Circuit and perhaps there is a CC, a C, or whatever it is.

[fol. 162] Q. The "CC" is what I called it.

A. I am not certain that is strictly an outgoing service.

Q. But you do know that there is such a service?

A. Yes there is such a circuit.

Q. The only question is, to your mind, whether it is or is not exclusively outgoing?

A. I am not certain of whether or not it is an exclusively outgoing wire.

Q. Do you know whether or not there is a "C" wire?

A. I believe that wire is still in existence.

Q. To what points does it go?

A. I am a little vague about that. I would have to refresh my mind. There are so many of them, and so many points.

Q. Well, see if this refreshes your recollection. It is a circuit, similarly secondary to the West Wire, is used for sending secondary and regional news, and for receiving news from its area which includes such points as Newark, Philadelphia and Wilmington, Delaware.

A. There was such a wire in existence, but I am not certain that it is in operation now, in just that form. If it is of importance, I would be very glad to get it specifically for you.

Q. I would appreciate it if you would. There is a Pennsylvania wire?

A. Yes.

Q. And is that a wire—Could you explain that?

A. Pennsylvania State wire.

Q. Does it carry primary news to the sections of Pennsylvania closest to New York and terminating at Harrisburg?

A. That I am not certain. I am not certain where it terminates. I know that it serves a portion of Pennsylvania, either supplementary to or in addition to State service also filed from Harrisburg, but there is such a wire.

[fol. 163] Q. Now, as you stated before, there is a Metro Wire?

A. Yes.

Q. Now, is that a wire which carries a digested primary report and regional news to Long Island, beyond Brooklyn, to Westchester, and to several Hudson River cities south of Albany, that is, Kingston, and Poughkeepsie?

A. That I would have to acquaint myself with. I don't know what that wire carries.

Q. Would you inquire into that too?

A. Yes.

Q. Now, are all of these wires edited by certain men?

A. There are editors assigned to each wire.

Q. How many editors are there, do you know? Six?

A. Well, there is an editor to each circuit. Let's see—West Wire, South Wire, North Wire, New York State, Pennsylvania—I am not certain as to the editorial assignment on these secondary wires, these "C" wires, as you call them. Some place between six and eight,—between that.

Q. Now, is there an editor for the West Wire?

A. Yes.

Q. One for the South Wire?

A. Yes.

Q. For the East-State wire?

A. Yes.

Q. Now, it is my understanding that there is one editor for the "C" and one for the "CC" wire?

A. Of that I am not certain,—I don't know how these assignments particularly are arranged right now.

Q. Will you inquire into that also?

A. I shall.

Q. There is also an editor for the Metro wire?

A. That is right.

Q. And for the Pennsylvania wire?

A. That's right.

[fol. 164] Q. So that it would be six or seven?

A. It is in the neighborhood of six or eight.

Q. Is there also a filing editor who relieves each of these men, these wire editors, forty-five minutes each for lunch during the day?

A. There is a relief editor, I don't know his hours.

Q. What time does your night staff come on for the purpose of taking over these wires?

A. Well, for the purpose of answering your question, just taking the figure, say, four to twelve, it may be an hour's difference here and there, but that roughly outlines it.

Q. Now, is information for these wires derived from your entire news gathering system as the source?

A. Well, the news, you mean?

Q. Yes.

A. The news that is available for relay into New York Office is that news which has been received from points sending it into New York, also the news that has come in from the foreign service. Out of this reservoir of news, as I say, is made up the news report for the members and bureaus on the circuits served.

Q. Now, how are the news items offered to these editors? Are they offered on certain type paper?

A. There are two questions. How are they offered--The news incoming, is copied on a printer-manifolder, in sufficient copies to permit a copy for distribution to each of the wires served. Usually this is on what we call a flimsy paper, in teletypewriter form. That copy goes to the News Desk, where it is read immediately for purposes of determining its propriety, and so forth; if there is nothing wrong with a story, so far as the story itself is con- [fol. 165] cerned, that copy goes to the various filing editors who read it and determine its value, if any, to the newspapers on this filing editor's circuit. It may be spiked. It may be discarded.

Mr. Cannon: What do you mean by that?

A. Kill-hooked. It may be put on a hook and not used. We all have spikes on our desks for the purpose of thereon placing copy which we are not to use. It may be suitable in a few words in which event he may hold it and edit it if necessary to bring it down to the meat of the story, according to its value, according to its worth on that circuit. If it is a story that is written by a reporter on the local staff, New York City staff, why, then it will come out sometimes in manifolded copies, similar to the copy that is on the receiving machines, in flimsy form, with hard sheets, which are given immediately to the City Editor, on the City Desk, for check, and the fate of that copy is also dependent upon circumstances attending it all. It may be spiked, or it may be discarded, and a half dozen wires in the place may not see any use in it, it may go only to the City News papers.

Q. Yes?

A. The disposition of the copy coming in and its handling is always subject to the needs and services of the respective wires, because the news needs and the news interests are different all over the United States. What may be a very prime and important news item to one filing editor

would immediately go into the waste basket to the next. It is the same story. I have about exhausted the routine detail of that.

[fol. 166] Q. Of course, with that, you have your regular refiling of different wires?

A. Yes, they have to fit it in. You can send so much and receive so much. You have a physical capacity on a wire that you begin to work from, and an eight hour trick ordinarily, provided there is no wire trouble, and things move promptly. In an ordinary eight-hour operation of a teletype circuit you can move from between fourteen and sixteen thousand words. That is about the capacity of an eight-hour trick on a single wire.

Q. Now, these punch people who sit at these machines and transmit news, now, they sit at something, I understand, which is similar to a typewriter, has a regular keyboard. Is that right?

A. That's right.

Q. Now, does the impulse, or the striking of the key automatically recreate a page of typewriter matter to some receiving point?

A. No, the procedure there is when you strike a key on a transmitting set, it punches, perforates in a tape, passing through the machine, a character which represents "A", for example, "B", and so forth, and so on, and then as that tape runs into the transformer, it causes the impulse to strike that character in type on the receiving machine. It is a tape operation and not an impulse operation.

Q. Yes, but it is set in motion by the striking of the finger on the keyboard?

A. Yes.

Q. And the recreation of it takes place?

A. Through the perforation of characters in the tape.

Q. And is seen visibly by the eye at the next point of operation?

A. At all points on that circuit.

[fol. 167] Q. But then in each particular point a new operator will take it up and send it by similar matter to some other point?

A. If an editor on another circuit decides that copy is to be relayed to another section of the country, then, if he so decides, there will be a puncher on this other circuit.

Q. Are the teletype machines owned by the Associated Press or are they rented?

A. Well, we have certain equipment of our own, Mr. Moscovitz, but, of course, at every point where the equipment of the utility company is used, that is their equipment. We have a considerable amount of our own equipment.

Q. Teletypes, however, you do own?

A. They are our printers. We have a considerable number of printers.

Q. The teletype machines then belong to you people?

A. We own our own machines, those that we do own.

Q. Now, the function of the filing editor, what is his responsibility? Is it first to edit the material for his wires as nearly as possible to perfection?

A. The function of a filing editor is to sift from thousand upon thousands of words of copy that are delivered to him from all parts of the world the news which represents a balanced news report for the bureaus and newspapers on his circuit. That is, he must exercise the selection of the news, to edit it, where it is necessary, to discard——

Q. Does he also direct transmission, that is, send material in order of its merit, and so on?

A. He is supposed to have a certain discretion in how [fol. 168] his wire should be filed. The reason I temporize on it is because we have considerable suggestions from the supervising editors that the reports should be filed a different way than the filing editor thinks it should go.

Q. Does he also receive news which develops along his wire?

A. Yes.

Q. Does he hold the final responsibility for the conduct of his wire?

A. That is a two-way question there, Mr. Moscovitz. I would say that as an individual he is held responsible for the measure of success with which he files that wire. The responsibility for that wire, representing in the news report of the Associated Press, what it should, is as much a responsibility of the supervising editor as it is of the filing editor, because, in matters of complaint, of serious complaint, particularly, the supervising editor has a strong portion of the responsibility to share.

Q. Now, this filing editor will accept guidance and suggestion from news supervisors, then?

A. Very decidedly so.

Q. And isn't there a different procedure in the matter of transmission of daily market and financial reports?

A. No, there can't be, Mr. Moscovitz,—we have the same general measure of precaution and guidance and supervision in the financial service as would apply in any other department of the organization. In fact, I might say, we are just a little ultra in care and supervision in that particular department of the service.

Q. After the editor sifts the material and finally decides [fol. 169] something will be sent and hands it over to the telegrapher, it has to go out exactly as it is, there can be no permission or change in what has been handed the Editor?

A. There is no way of changing a story that has been turned into tape and the tape transmitted.

Q. But the telegrapher must sent it out exactly as he received it from the editor?

A. It is not necessary that he must do so. I am taking an extreme case——

Q. He cannot re-edit what the editor has said?

A. No, but he can make suggestions to the editor, and if the editor declines, the puncher can make the same suggestion to the desk supervisor, which occasionally happens.

Q. But, what is the general practice?

A. He sends the copy that is placed before him.

Q. Exactly as it is placed before him?

A. As it is placed before him.

Mr. Moscovitz: Mark this for identification.

(Documents referred to marked for Identification, Board's Exhibits No. 6 and 7, respectively, Witness Stratton.)

By Mr. Moscovitz:

Q. I show you, Mr. Stratton, Board's Exhibits Nos. 6 and 7 for Identification, and you will please tell me what these are. I will ask you, this: Is Board's Exhibit No. 6 an incoming flash to the editor as to what is taking place in a certain part of the country in the matter of news, indi- [fol. 170] cating that story will come in later? That is the small one.

A. That is what in our language is described as a schedule,—I can't identify the initials—but a bureau is schedul-

ing to the New York Office 150 words on the question of the Wagner Act's constitutionality in labor hearings. That is the index line as to the contents of the story.

Q. And the time as to when that schedule was received by the filing editor is indicated on the schedule?

A. Yes, 209—PES.

Q. That means 2:09 P. M.?

A. 2:09 P. M.

Q. Two-nine in the afternoon?

A. Yes.

Q. Now, after receipt of that, does the editor then receive the scheduled story?

A. That schedule will go then to the general desk where it will be considered whether it is a story that is worthwhile taking in from the Bureau, which is the same manner that news of all description is scheduled to any office when there is doubt whether there is either capacity for the story or its news interest is sufficient to justify filing at this particular hour, or any number of a lot of other reasons. The General Desk Editor considers that schedule and if he feels it is news worth while being transmitted, he will mark the schedule so, which will be returned to the filing editor's desk and if it should be something that should be moved promptly, it will be so stated. If it is something to come in at the first opportunity, it will be so indicated.

Q. What happened on that particular story?

A. In this particular case, the story was ordered in, apparently——

[fol. 171] Q. Any indication as to what time it was ordered?

A. Greenville, South Carolina—then that helps me identify the scheduling bureau,—Charlotte. Yes, the story was ordered in, which is described as a "lead story", being completed in the office at 2:40.

Q. What does a lead story mean, public interest?

A. No, that means that there has been a previous story about this and this contains news of a later development.

Q. I see, and is there any indication as to what time it was ordered in? What time was the story received?

A. What you can determine there, that it was ordered in between 2:09 and 2:40.

Q. Because the story finally came in at 2:40?

A. Yes.

Q. So that between the time you received first notice and the time you received the actual story, about thirty minutes elapsed. Is that right?

A. 31 minutes, according to its time.

Q. 31 minutes.

Mr. Moscovitz: I will offer these in evidence.

Trial Examiner Clark: Admitted.

(Documents referred to received in evidence, marked Board's Exhibits No. 6 and 7, respectively, Witness Stratton.)

By Mr. Moscovitz:

Q. After that story was received, Mr. Stratton, it was [fol. 172] then sent out on your system of wires throughout the country; is that so?

A. Not necessarily. It may not have been considered worth while in accordance with the conditions existing on some other wires. That time in the afternoon it is getting pretty close to publication, edition time, that story may have been brought into New York and may have gone nowhere, may have been spiked every place,—or, it may have been used every place. I couldn't say without following the story.

Q. The fact that you ordered it, would indicate that was something which went out. Is that so?

A. No, the evidence insofar as bringing the story in is concerned, would be that it was the judgment of the controlling desk that it was a story of value to the papers served on that particular circuit, because, you see, that comes from an outlying wire, it comes in from the South Section, and it concerns a hearing which certainly two or three surrounding States, particularly in the Carolinas, ought to be interested in.

Q. That is, it concerns the constitutionality of the National Labor Relations Board?

A. I am just telling you what would be my opinion. I would say it was certainly a story which would be filed for the benefit of the regional character of it, if not more.

Q. Probably something of the type which would be sent throughout the country, from your own experience in the Associated Press?

A. That is not an outstanding development there, Mr. Moscovitz, so I couldn't say, some feature of that hearing

may be a great deal more attractive than this particular story.

[fol. 173] Q. At least, that is typical of the way stories are handled?

A. That is typical of the manner of scheduling and ordering in, although it is an unfortunate handling from the standpoint of the time that it got in. I have seen schedules lay on the desk seven hours before it ever got in.

Q. You mean, there was pretty fast timing on this?

A. Reasonably good service.

Q. You don't mean to tell me that your service is any slower than that on important questions?

A. Well, I am still passing judgment on the story as it appears, Mr. Moscovitz, which is not an outstanding development. I should say for the status and the character of the news, the timeliness, the elements that are in that story, that that was reasonably well serviced.

Q. I see. And if it was anything other than the particular question involved there?

A. Oh, the question wouldn't make any difference, the subject didn't make a bit of difference.

Q. Each wire has a separate routine, doesn't it, Mr. Stratton?

A. Routine, meaning what?

Q. Well, routine of time and handling?

A. Well, various wires have different hours of operation.

Q. Yes.

A. And they have different types of news that the newspapers on that particular circuit may want, which would be a little different than the material desired by another circuit. They may not want so much sports, or may not want so much feature news, or what-have-you, may not want so many markets. In that respect, the routine, the detail of each wire is different.

Q. I show you Board's Exhibit No. 8, for identification, [fol. 174] Mr. Stratton, and ask you to explain to me exactly what it is.

A. This is the Market Schedule on the Day State-East Wires.

Q. You are looking at the first page?

A. That is right.

Q. Is that all?

A. Second page is Day-South Routine.

Q. Where does that go?

A. That is the South Wire.

Q. That is the South Wire we have been talking about?

A. Yes, the third page is "C" Wire Day Markets. Fourth Page is the Pennsylvania Wire Day Market Routine. The Fifth Page is Metropolitan routine.

Q. Now, they are schedules, is that so?

A. These appear to be the outline of markets that are desired on the particular circuits.

Q. Who gets that up?

A. That is arranged by the Bureau Chiefs in the respective States served by this Circuit and the Bureau Chiefs obtain this information from the members newspapers served on the circuits, and from the reports of the various members on a circuit, as to what they want in the way of markets service. The Bureau Chief compiles the consensus of all those quotations which the majority——

Q. Bureau Chief here in New York City?

A. I will finish it—which the majority of the newspapers agree to. Then that, if it is a circuit that involves passing through two or three States, then, each Bureau Chief submits that data to the markets department in the New York office, who compiles the majority average of all the issues that are wanted by members served along that circuit.

[fol. 175] Q. Then it is gotten up by your bureau chief here finally?

A. Well, it is put together, it is manifolded here. It is information that has been submitted.

Q. And it is used for guidance of your offices here?

A. It is used for the guidance for whatever point is controlling the filing of that wire.

Q. That is, the people here in the New York office use this to know exactly what type of information shall be transmitted in certain places?

A. On market stuff.

Q. Yes. Now, do you have similar compilations for other things, or is this a special?

A. I don't know of any other thing that is compiled that way.

Q. You wouldn't have it for general news?

A. No, the only thing I can think of besides that is ship news. Some papers want ship news and some don't.

Mr. Moscovitz: I offer this in evidence.

(Document referred to received in evidence, marked Board's Exhibit No. 8, Witness Stratton.)

Trial Examiner Clark: We will take a short recess.

Recess.

(The hearing reconvened after a ten minute recess.)

[fol. 176] Q. Mr. Stratton, these leased wires that you have been talking about, you have a contract with the American Telephone and Telegraph?

A. We contract with the Telephone Company for special service which, as I explained before is merely contracting to pay for service, facility service set up for a given period of hours. It is just the same as you contracting for taking advantage of one of their rates for long distance telephone calls.

Q. Would you have any particular objection to producing a copy of such a contract that may now be in existence?

A. I have never seen it myself, and I don't know whether there is such a one in existence, and I don't know what it contains, of my own accord. In respect to making it available that is something that is impossible for me to say.

Q. I won't pursue that question any further, Mr. Stratton. Just one more question on wires and I am through. When you have something that some news which is of particular interest to the country at large, such as the World Series, what may happen to be played here in New York, is it true that the Associated Press will hook up all its wires except their auxiliary news and permit the story to go through without any one in New York even so much as touching the wire?

A. No, sir, that is not true.

Q. Is that type of news handled in the same way as other news?

A. It is handled precisely the same way as other news, Mr. Moscovitz, when it comes to the supervision of what is distributed on that wire.

Q. Handled in the same way you say?

A. It is handled and supervised the same way.

[fol. 177] Q. Any exception in that type of news?

A. No, I don't know that there is an exception. Neither is it true that in case of a World Series that the complete service of the Associated Press would be tied up, which I

believe was a part of your question. Because the World's Series Service many times is set up with a special service. Special facilities are ordered for it, and the facilities determined in accordance with the needs and desires of the newspapers subscribing to it. But in any event, howsoever it may be dispatched, it is man operated, handled and supervised in exactly the same fashion as any other feature.

Q. In addition to news gathering and distribution, you also have as I understand in accordance with your testimony, a wire photo service?

A. That is right. We have a wire photo system, Mr. Moscovitz.

Q. All right. Is that what you call the Wire Photo System or the Wire Photo Service?

A. If I may repeat, wire photo merely means the mechanical, it is the form of wire delivery of a picture. In other words it is serving in its function the same way that the mails will carry delivery or that airmail will carry delivery. It is wholly and strictly a facility of delivering pictures by wire rather than by mail, airmail or any other method.

Q. Is that facility of system in existence today?

A. Yes.

Q. It is in operation through your New York City office?

A. The New York City office is a part of the system.

Q. How long has it been in existence, do you know?

[fol. 178] A. I believe it was put into operation on January first, 1935.

Q. And are you familiar with the manner in which it was underwritten?

A. Not very well.

Q. If I refreshed your recollection on it do you think you might recall?

A. If it concerns something that I am acquainted with.

Q. Do you recall whether or not it is true that thirty-nine newspapers throughout the nation, all members of the Associated Press, underwrote the cost of installing the Wire Photo Service?

A. I don't know as to the number, Mr. Moscovitz. I do know that a group of members of the Associated Press contracted to receive and install the equipment necessary to put the system into operation.

Q. Do you know how many cities are connected by wire in the operation of this system?

A. I think it is twenty-six, some place between twenty-five and twenty-eight is my recollection.

Q. Would you say transmissions is instantaneous between these points?

A. No, because we use those facilities for the transmission of a great many pictures which are strictly one point interest, or between Chicago and Dallas, for example, between Denver and Kansas City. It is possible to hook up the whole system and send the same picture over that service.

Q. Is that ever done?

A. That is done.

Q. Frequently?

A. It is done whenever we have a picture of that comparable importance to a news staff.

[fol. 179] Q. Would you do it with a picture of Hauptmann?

A. The chances are that it was.

Q. Is it instantaneous service?

A. Instantaneous to this extent: that the picture is being received at one point simultaneously as it is received at other points on the system.

Q. Are these pictures received through regular photo channels?

A. All pictures of the Wire Photo System are produced by the News Photo Service.

Q. You have your own photographers?

A. Yes.

Q. They are in the field?

A. We have them in the field, yes.

Q. Is that where these pictures originate for you?

A. A great many of them. Of course, we have the picture services of our member newspapers available just as we have the news available, and a certain proportion of our pictures originate through our members. A certain proportion of them are taken by our own photographers. Certain number of them may be taken by photographers neither of the Associated Press nor a member, but which we have purchased through the usual sources.

Q. You may have pictures coming in too from members which you in turn would transmit to other members?

A. Well, if you are speaking of the Wire Photo——

Q. I mean Wire Photo.

A. A picture made available to us by the Omaha World Herald and transmitted on the Wire Photo System would be a picture that is made available by wire in the same manner that a story from the Omaha World Herald made available by telegraph companies.

[fol. 180] Q. Are these pictures only for the use of members of Wire Photo?

A. No, the prints—say the products of the wire photo service is available to all members.

Q. All members of the Associated Press?

A. Yes.

Q. To get the Wire Photo Service you must be a member of the Wire Photo, is that true?

A. No, because as I just say, the product, a picture transmitted by wire photo is available to any member of the Associated Press which takes a picture service or a mat service, because the prints of the Wire Photo are made in the mat form at a great many places.

Q. It is available to a member of the Associated Press but does he not have to pay something extra for it?

A. He has a participation charge in it that covers that availability.

Q. So that is in addition to his regular assessment for news is that so?

A. Yes.

Q. Are Wire Photos accessible to people who are not members of the Wire Photo Press or the Wire Photo System?

A. No.

Q. Do you ever use the mail or airmail in the transmission of these pictures?

A. Yes.

Q. And under what circumstances does that occur?

A. Well, as it follows where the use of airmail enables the distribution of a picture, into a locality which it is not available to by wire photo, incoming or outgoing or by mail where it is a member using news pictures, but does not prefer them, desire them by airmail or by wire photo.

Q. Under what circumstances, for instance, here would [fol. 181] your office send a picture by airmail or mail rather than by wire, and to what points?

A. Well, the type of service ordered would be the first thing. That is if a newspaper orders the type of service which provides for ordinary mail delivery that is what he should get or if it is by airmail that is what he should get. In some respects too the value, the importance of a picture is to determine whether it is a picture to be delivered by one means or another.

Q. So that where there may be Wire Photo facility you may have the situation of a man requesting that the photo be sent to him by mail?

A. Oh, yes.

Q. And why would he want mail instead of the wire transmission?

A. Well, perhaps one cause is it is a service that he finds suitable and satisfactory to his particular situation at a price that is less, and less expensive.

Q. How would the price differ, do you know?

A. No, not just as a general thing. The charges for the News Photo Service are determined precisely in the same ratio and on the same basis that the news service assessments.

Q. Do you make an assessment on the basis of population for Wire Photo too?

A. The same basis of principles apply in both cases.

Q. What do these people do either the Associated Press members for news or the Wire Photo Members for photos when they pay their assessment. Do you send them a bill pointing out to them that their assessment for this particular period is so much money?

[fol. 182] A. They are advised what the assessment will be for the amount and type of service that they have ordered.

Q. Who advises them?

A. They are advised in some instances by the Traffic Department, in other instances by the Treasurer's office.

Q. That would be just the New York City office of the Associated Press?

A. That is right.

Q. How is the computation made here? Is it the result of an investigation conducted by the Associated Press office?

A. The compilation—what do you mean by that?

Q. The computation of assessments?

A. No, that is, as I explained previously, that is arrived at through this scientific formulae that uses a basic rate, a basic figure rate on the basis of population which in each instance determines the multiplication of the rate.

Q. Could you spell that out, using an example?

A. Not very well, Mr. Moscovitz, because there are so many elements that are involved. For example, there are any way from one to half a dozen wires made when they make a feature service, they may take photo service, they may take a number of extra services, all of which enter into a compilation of service.

Q. Could you take the simplest situation which you know and use it as an example, so we might follow this through once and for all, and get it straight?

A. It is not something that you can handle that way, Mr. Moscovitz.

Q. Do you have any city, for instance, in New Jersey where there is but one paper using your service? Take Newark.

A. Should we have any City——

[fol. 183] Q. Take Newark, New Jersey. There is a city of we will say half a million population.

A. Well, whatever the population of Newark may be that forms the unit basis on which the assessment is determined. Now the basic figure, the unit rate, what we call the card rate, for a city of that population would be arrived at through a scientific calculation which has formed the basis of this unit ever since we have had this organization. In determining that rate, however, we would have to consider in it the amounts of service outside of the first wire, for example, that entered. And you can't take any city, and I tell you what the assessment would be for it without knowing how many elements of expense, how many features of service would be entered in it.

Q. You make your computation before you give the service, don't you?

A. That is right, and the computation is made on the basis of what the member applies for in the way of service.

Q. We will take Newark, New Jersey again, which has a population of half a million people, approximately. You have any morning paper there that you service? The Newark Ledger?

A. Look at the Directory there, it will show you. I don't know off-hand. But in any event, Mr. Moscovitz, I don't know what the right rate for Newark—I don't know what the rate for any of these populations off-hand would be.

Q. Could you bring in a sample bill, leaving out the name of the particular newspaper if you so desire, showing over a period of time what the assessment was?

A. To show you how the formulae of the assessment is arrived at?

[fol. 184] Q. Yes.

A. I think that could be arranged. I could have someone take a theoretical case and tell you what the assessment would be.

Q. On the basis of the respective services that may be offered.

A. That would have to show this assessment is the figure that would apply for certain specific services.

Q. Would you be kind enough to do that?

A. I think I can arrange that. I will try to any way.

Q. The bill is sent to the particular newspaper and his payment due on certain dates.

A. The assessments are paid weekly in advance.

Q. Weekly in advance. And they are payable to the New York City office?

A. Payable to the Associated Press.

Q. All members make their payments to this office, is that so?

A. Their assessments.

Q. And suppose a member is in arrears for one week or does not pay in advance for the week, is his service cut off?

A. Well, ordinarily when service—when they do not remit for services as required, they are immediately subject to suspension of service. If they decline to pay or if they do not pay when due they are subject to suspension. In many cases where that has happened it has been due to causes other than wilfully declining to pay. There has been some mistake in routine, it has not arrived. It has been very, very rare that a member of the Associated Press has not paid his assessment regularly and on the due date.

Q. But if payments are not made?

A. They are subject to suspension. We notify them the [fol. 185] second time that it is due and notify them that as

provided in the By-laws—incidentally, you will find it all very specifically outlined in the By-laws of this thing how it works out. If it reaches the point where there are conditions which do not observe the obligation of the member in respect to the assessment, then it remains for the Board of Directors to consider the case in accordance with the matter as outlined in the By-laws there, the procedure as outlined. It would take me far too long to explain.

Q. Board Exhibit No. 9 marked for identification which is the twenty-third edition as amended April 21, 1931, the By-law and charter now in existence?

A. I think so. That is our last copy. I believe that is correct, Mr. Cannon, we have not any issued since then.

Q. Will you explain to me the operation of the Wire Photo System and perhaps it would make it easier for you if I ask you what the name of the person in charge and control of the system is called. Do you have a wire photo editor?

A. The Executive Editor of the News Photo and Feature Service is in charge of the production of the pictures, all news photos are produced under the direction of the executive editor in charge of the News Photo Service, the Wire Photo System itself being a mechanical thing, the delivery arm of the service is in direct charge of the assistant general manager in charge of traffic.

Q. And do you call the Wire Photo Editor a monitor—that is the name he is commonly known by?

A. I don't think so. We have news photo editors.

[fol. 186] Q. Do you have a Wire Photo Editor?

A. No, News Photo Editor. The News Photo Editor determines whether it is a picture to be sent by this mechanical means, this wire means or by other methods of dispatch.

Q. Do you have a switchboard that has to be operated in connection with this system?

A. A switchboard?

Q. Yes. If it is not a switchboard?

A. Of course, there are the customary devices, whatever they may be called.

Q. What do you call them?

A. That set up the respective points that participate in receiving a picture, that being true at all points, because the system comes in and out there. You can send it to one point or more than one point.

Q. What is the mechanical thing that you have in the office to take care of that?

A. It is a control board.

Q. You call it a control board, and is this control board connected up with the various subscribing cities?

A. Well, it is the same set up in every bureau, Mr. Moscovitz. It is the same set up in every wire photo plant, it is the same equipment.

Q. Does it serve about how many cities?

A. Twenty-five to twenty-eight; Twenty-six I believe is the number.

Q. And are the offices in these cities in immediate connection with this system?

A. Yes, they are parts of the system.

Q. There is no central operator that is necessary?

A. No, it is operatable from any point.

Q. Is it based on a loud speaker system? A. No, a loud [fol. 187] speaker system. It is possible for voice communication along throughout the system. You can communicate to Kansas City, tell them that this picture is coming, the fact of the matter is you can stand and talk with the editor at Kansas City at the same time the picture is being transmitted.

Q. Can you stand in your New York City office and speak to all twenty-six offices and cities at the same time if it becomes necessary?

A. I am not certain about that, Mr. Moscovitz. The question has not come up. I don't know whether you can to all or not.

Q. Can you speak to more than one?

A. Yes.

Q. Has it been done?

A. I think so. I am a little hazy on some of these things because I am not acquainted with the detailed mechanics of the operation.

Q. But it is possible you know to speak to more than one of the cities at the same time through this system?

A. Yes.

Q. Do the various bureaus throughout the country where this system is in use keep the editor in New York informed of the progress in collection of photographs needed for wire photo?

A. Both ways.

Q. You do that both ways?

A. Yes.

Q. Is this a true statement: If a bureau has a photograph that thinks is justified for wire photo or has a photograph asked for by the New York monitor, meaning the New York editor, it communicates with the editor over the inter-bureau speaking system, the editor will order the photograph sent or rejected?

A. Yes.

[fol. 188] Q. That is correct?

A. Yes, it is possible for him to do that.

Q. Is it true that the controlling of this system is done only from New York?

A. No, sir.

Q. Where else is it done?

A. You can control from Los Angeles just as well. Many times the Wire Photo System has been turned over entirely to the source of outstanding pictures that are waiting there for it.

Q. Where is it generally controlled?

A. I want to be sure I understand your question. You mean controlled physically, the mechanics?

Q. Yes.

A. Well, the wire photo service is staffed by men throughout the country. The Traffic Department determines that; they develop their own personnel. It is a skilled operation, a technical operation, a highly technical and they develop their personnel.

Q. Your Traffic Department here in New York determines the manner in which the system shall be operated, and the people who shall work in the system?

A. I would not say throughout the service, no.

Q. Throughout what part of the service?

A. They certainly determine it here in New York because you see we are developing at all points, we are constantly developing personnel as well as experimental work and laboratory work is developed in the service in each of these places. A great many of the things that are developed at these points are contributed to the improvement of that service through the availability of so much splendid talent that we are developing throughout the service.

Q. Would you say it is a correct statement that an aver-

[fol. 189] age of fifty pictures a day go over the leased

wires of the Photo Wire System? A. I think that is too many.

Q. You think fifty pictures a day throughout the system?

A. That might be true if you should include the occasions when we will transmit regional pictures or pictures between one or two points, something like that, it might average fifty over twenty-four hours.

Q. What would you say a safe number would be

A. Somewhere in the neighborhood of thirty-five.

Q. Somewhere in the neighborhood of thirty-five. I show you Board Exhibit No. 10 marked for Identification.

By Mr. Cannon: What was Exhibit Nine?

Mr. Clark: The By-laws.

By Mr. Moscovitz:

Q. I show you Board's Exhibit No. 10. It is a publication, announcement of the Associated Press News-pictures by wire. Are you familiar with that publication? Have you seen it?

A. I believe I have.

Q. News pictures by wire is in reference to wire photo service?

A. That means, yes, news pictures of the Associated Press which are transmitted by wire.

Q. The pictures that you see on the outside of this publication are they pictures typical of the service which is rendered by the system?

A. No, I should not say so. This is prepared very largely for the purpose of display. I don't know how many [fol. 190] subjects in here might be heavy enough, we will say, or suitable for wired transmission.

Q. But they are Wire Photo pictures, are they not?

A. They are pictures which would be sent by wire photo system if they were worth while.

Q. Do you know whether they are pictures that had been sent?

A. I could not say. I don't know which of these might or might not have been sent.

Q. The indication by these photographs here in various parts of the country from which they come would be an accurate indication of the general scope of the system's operation.

A. In fact, Mr. Moscovitz, if my memory serves me right, I think that little brochure there was prepared before the wire photo system was in operation. That is my recollection, or very shortly thereafter.

Q. The publication contains a description of this system that is about to go into operation and points out the manner in which it is to be operated. Are you familiar with the description contained in that exhibit?

(Witness Stratton examined the Exhibit 10.)

A. Yes, I think, Mr. Moscovitz, that the pictures you see inside here are pictures that were transmitted by wire, the examples given. This represents a description of a service in initiation at the time this brochure was prepared. I don't know in what respect some of the detail may be changed by this time.

Q. This was a service contemplated by the Wire Photo [fol. 191] Service. That is the service described in this.

A. Contemplated the transmission of pictures by wire.

Q. Can you tell me whether or not the service in existence at the present time corresponds with the description contained in this publication?

A. In its broad aspects, I am quite certain it is the same.

By Mr. Moscovitz: I offer that, Exhibit 10.

(The Exhibit referred to was received in evidence and marked Exhibit 10.)

Q. The employees who engage in this particular operation that you refer to are all editorial employees—they come within that?

A. Employees in what?

Q. The news department.

A. News Department?

Q. Yes.

A. All of us, Mr. Moscovitz, who are not members of the Traffic Department are members of the News Department. We have only the two classifications of employees in the organization and every one who is not a member of the Traffic Department is a member of the News Department.

Q. And according to what you testified this morning that would be people that we have been calling editorial employees?

A. Yes, all the employees, all the employees of the Associated Press that are not traffic men are on the News Department payroll, whether they be a sportsman, a news [fol. 192] photographer or feature man, or what have you, they are all members of the news department. They are producing some elements that go into the news service of the Associated Press in its many forms.

Q. Do you in addition to the wire photo service also have a news photo service?

A. The news photo service is the service, supplying pictures to the wire photo, Mr. Moscovitz. I am trying to keep the differentiation there because the wire photo is purely a wire system. It has got nothing to do with news photo service. It is a method of transmitting it. It has not got anything to do with the news photo service.

Q. The news photo service is the supplying agency?

A. The news photo service produces the pictures for all purposes whether they be transmitted by wire photo or any of the others.

Q. Are they the photographers?

A. The photographers are a part of the news photo service.

Q. Who else would come within the news photo service?

A. The various news photo editors, the editors around the desk which are following the news reports for the purpose of producing the news pictures of the news event.

Q. Dark room men?

A. No, the dark room men are on the Traffic Department. The Dark room men being a branch of the service which produces the material for the wire photo in this case, the negative, and also under the direct supervision of it, I don't know what they call him, we will say, superintendent, the man who makes uniform throughout the service the product of the dark room, which is a very technical and every important feature in production of a news photo.

[fol. 193] Q. Do these people keep in constant touch with the news report of the Associated Press?

A. The news editors do.

Q. So as to keep the flow of news along with the pictures?

A. They read the news service or tips or suggestions of a news event which has pictorial interest and importance. Then they proceed after the picture, like the man who

originally was assigned to the story or followed the event for its news interest.

Q. Do your photographers in the New York office travel outside of the State on assignments for the purpose of getting pictures?

A. We have photographers who are assigned to New York who have gone as far as Ethiopia.

Q. Is that so. How many photographers do you have in the New York office?

A. I don't know the exact number. I should say half a dozen, something like that.

Q. They constantly go back and forth from New York and other points?

A. Their primary assignment is the obtainment of pictures in New York City for the benefit of the other members in the organization. But if we have a condition like the recent flood for example, where it was necessary to supply a photographer from whatever source he was available we sent them in New York State, sent them over into Pennsylvania. They are mobile.

Q. They are mobile?

A. Yes.

Q. Do you have someone from the New York office cover the Hauptmann case in New Jersey?

A. I think there were, yes.

Q. Do you recall who it was that covered that story?

A. No, I don't by name.

[fol. 194] Q. Do you know whether or not the World's Series of 1935 in Detroit and Chicago were covered through your New York office?

A. I can't say, Mr. Moscovitz. I am certain however, that such staff as we had in both places were used, whether there was also someone from New York I don't know.

Q. Would it refresh your recollection if I pointed out that perhaps Murray Becker covered that story in 1935?

A. I don't know.

Q. Do you know whether or not the Kentucky Derby in 1935 was covered by the New York office?

A. No, sir, I don't know.

Q. Would you know whether or not the New London Regatta in 1935 was?

A. I can't say.

Q. Do you know whether or not the Campaign tour of the President Roosevelt was?

A. I don't know about the campaign tour. I do know one of our photographic staff whose base was Washington has gone with the President on a great many of his trips.

Q. Would you inquire into the references I have just made about the Kentucky Derby and the others and ascertain for me whether or not they were covered by your New York reporter?

A. You would like to know if we had a photographer from the New York office at those events?

Q. Yes. In addition to your News Photo Service you also have a feature service?

A. That is right.

Q. Will you explain to me what that service is. Before you go into that, is it a separate department?

A. Yes.

Q. But it is part of the Associated Press?

A. That is right. It is another branch.

[fol. 195] Q. All of these agencies that we have been discussing are separate departments.

A. They operate as a department. Of course they are all a part of the organization.

Q. In the Associated Press?

A. The feature service as I think I mentioned is a service carrying the general run of news that is of a character minus the spot news or the current news elements, thus making it possible to write that news and mail it. It is the type of news that you can mail and still retain its life and desirability. In a few words that is what it is.

Q. For example, what?

A. Well, take a convention or a fixed sports event, or anything of that character which is going to happen at a definite date, before that meeting, or there may be a number of important speakers. We obtain in advance an abstract of what they are to deliver. We will mail that out to the members to be held for release until the time specified it is made available by mail but its time limit is just as good as if it had been sent by wire at the time it was released. We may write feature stories about people in the news, personalities, human interest material, all of which makes very interesting and entertaining reading, but the time element does not make it necessary to transmit it by wire.

Q. Is it national operation?

A. A national operation?

Q. Yes.

A. I don't—how do you mean that?

Q. I mean does it operate in its news gathering process.

A. The feature service is written, the material, the copy in the feature service goes from all over the world. It is [fol. 196] edited and handled and given precisely the same treatment handled and supervised the same way as the news reports, except that it is put on printed sheets and mailed to the members.

Q. And does it have its own staff here in New York City?

A. It has.

Q. In addition to its own staff, does it call on the news staff men throughout the world for help?

A. It does not call upon them, now, Mr. Moscovitz, because the feature service is strategically staffed throughout the world. In the last two years—in fact, we have had so much material from the Feature Service staff itself that it is an exceptional occurrence now when we have to call upon anybody for delivery to that service.

Q. Now, if such news of local interest would you say that it is serviced by the various state bureaus?

(The stenographer read the question to the witness).

A. I am trying to figure that out.

Q. I will put it this way. Most of the news in this service is for materials which originate at the source, that is true?

A. I believe I understand what you mean. I will take an example. For example in Columbus, Ohio we may have a staff reporter who is covering the State House, for example his assignment is to cover the State House. He writes a story for perhaps Ohio interest. He comes in and he writes the story, he submits it to the Editor in charge. The editor may immediately kill it. He may spike it and say it won't [fol. 197] go any place. On the other hand, it may be a story that is worth while for the members on the Ohio State wire only. On the other hand, it might be a story that is good enough for distribution to the trunk wire which will make it available everywhere. A story can't be determined—that is, its general value can't be determined until it takes its place before the eyes of the people that are handling it. For example, we will say a local

story. To us local means the member within the city. Now you say here is a story that is worth while for the Associated Press. It is written. It is worth while for the Columbus Dispatch or for the Columbus Journal and would be absolutely valueless to any one outside of Columbus. Or it may be a story that is of use and very desirable to the Cleveland Plain Dealer, and no one else. Yet, we would transmit it if it was worth while and would try to get that story to the Cleveland Plain Dealer. Do I answer it?

Q. If the story is of national interest, for instance, in the eyes of the person who happens to be handling it is it sent to the New York office?

A. In the case of a national story.

Q. If the case is of a national interest in the eyes of the person who happens to be handling it wherever it may be, will it then be sent to the New York City office?

A. Unquestionably it would be sent to the New York City office if it was news the New York City newspapers should have, or this part of the country.

Q. Would it then pass over the general feature service desk?

A. Not pass over the desk in the sense I believe you mean. The feature service would also receive a copy of [fol. 198] the news report of the Associated Press which it reads for the same purpose that the news photo editor is reading it.

Q. Doesn't the editor of this desk personally handle it?

A. You are talking now of feature service copy or wire copy?

Q. I am talking about feature service.

A. Certainly if it is a story written by one of our staff at Columbus and sent in by mail for use in the feature service that will come to the feature editor and will take its place also in the reservoir of the news of the feature type.

Q. And he will decide whether to put it in shape?

A. He will decide whether it is worth using or not.

Q. Do these editors then prepare the feature service pages sent out to the clients?

A. That is right.

Q. How sent out, mats and proof sheets.

A. Proof sheets, and where a story in the feature service is illustrated, and there are mats made of that illustration

and those newspapers which desire that service, that mat service, why they are provided with mats of those.

Q. You also call proof sheets pages?

A. Proof sheet is the proper word.

Q. Are they printed just like any other newspaper is printed?

A. No.

Q. They have head lines?

A. It has a form. It is a clipped sheet more than a newspaper. It is put up in a form which is readily clipped.

Q. Does it not have a headline?

A. It says Associated Press feature service at the top.

Q. Is it then mailed to the newspapers throughout the country?

[fol. 199] A. To the newspapers then subscribing to that service. That is not a compulsory service.

Q. What do you mean?

A. It is a service that a man can take or not take.

Q. Is there any service that is compulsory?

A. No.

Q. How many subscribers do you have to this feature service?

A. The proof sheets. I think I will say between one thousand and eleven hundred.

Q. Is the basis of assessment in this service the same as in the other?

A. That is right.

Q. Does Howard Bleakley work in this particular department?

A. Mr. Bleakley is assigned to the feature service, yes.

Q. Is he?

A. He is the science editor.

Q. Does he also write for the news service?

A. Oh, yes.

Q. Does Mr. Bleakley, for instance, travel about the country considerably?

A. Yes.

Q. And for the purpose of gathering this type of news?

A. No. His title suggests the type of thing that he is after. His traveling is necessitated because of the holding of these many scientific conventions that are held all over the country. And he usually covers them.

Q. Alone?

A. And assistants.

Q. New York is his regular office?

A. His home is in New York.

Q. He travels throughout the country you would say?

A. Yes.

Q. Also abroad?

A. I don't think he has been abroad.

[fol. 200] Q. Are there any other services aside from those which we have gone over in the Associated Press?

A. Are there any other services in the Associated Press?

Q. Yes. Aside from those.

A. I don't think so. I think you got them all.

Q. You say that the basis of assessment in all of these instances is the same?

A. Yes. There is one basic formulæ.

Q. Now, when the members receive the Associated Press services or service they in turn incorporate the material that they get into their newspapers, do they not?

A. You mean they publish the news of their home community?

Q. Yes.

A. Yes.

Q. So that the Associated Press dispatches will appear in member publications throughout the United States and throughout the world?

A. Throughout the United States.

Q. Throughout the United States?

A. Yes.

Q. By a system of interchange perhaps in publications abroad, is that true?

A. Yes, we have a few papers outside of the United States, not very many.

Q. These newspapers of the members are then sold, of course, to the public?

A. That is their object in publishing a newspaper.

Q. As far as you know such sale is made by the members of the Associated Press for such profit as they can get out of the transaction?

A. You are getting into something I don't know anything about there, Mr. Moscovitz. My business only is to deliver the news to that member.

Q. You don't know whether or not the members of the [fol. 201] Associated Press are interested in making a liv-

ing out of the sale of their newspaper? From the period of time that you have been in this industry, from your observation, would you say that the members of the Associated Press sell their newspapers to the public?

A. I think we all know that.

Q. I don't think we need pursue that any further. It is quite obvious. Does the Associated Press compete national with news released by radio?

A. No, not to answer your question in the way it was asked, Mr. Moscovitz.

Q. The answer is that you do not compete with radio?

A. If you mean that are there agencies which are distributing news by radio, there are. It is another question if we are competing with radio news services which we are not.

Q. You are not. There is no special effort made to get news before the eyes of the public before such news is given to the public by radio.

A. The only thing that governs us there, Mr. Moscovitz, is to get the news right and get it to its destination in the quickest possible time in accordance with the fundamental principles. If we do that, we have always felt that competition takes care of itself.

Q. Would you say that the radio was an important competing factor in your business?

A. I have not any opinion about that.

Q. Do you have any opinion as to whether or not it is a competing factor?

A. No, I have not, Mr. Moscovitz, for the reason wholly because in my position, in my work, thus far I have not had that to consider.

[fol. 202] Q. Do you know whether or not the Associated Press as such has had that question to consider?

A. Oh, there may have been a question, but I should think by what has been its attitude and its procedure in the matter, I should think that it could not be considered what you have asked.

Q. It could not be considered as a competitor?

A. No.

Q. Why do you say that?

A. Well, we are still operating a news service by the most efficiently known methods of producing, and delivering a report which does not depend to any extent at all

on the radio, and up to this point I believe I can be forgiven for saying that I think we have made a reasonably good show of our service.

Q. Do you know whether or not there is any news commentation by radio today which is in effect competition with the Associated Press dispatch?

A. No, sir.

Q. You say there is not?

A. No.

Q. Was a press radio bureau organized in the Associated Press?

A. No. The Press Radio Bureau was organized by the American Newspaper Publishers Association.

Q. Did you help organize the bureau?

A. No, we did not help organize the bureau. We—speaking of the Associated Press—were one of several parties which agreed to cooperate with the objectives of the Press Radio Bureau.

Q. And why was the Press Radio Bureau established?

A. To provide news briefly for those newspapers which had radio stations.

Q. What newspapers have radio stations?

A. Off-hand I could not say, Mr. Moscovitz. There are a great many of them.

[fol. 203] Q. Was it not also because of recognition of the fact something had to be done to meet the growing competition and the growth of radio commentators on the news?

A. When you say competition, no. I should say that the need for some authentic agency to supply news to those newspapers which felt that in their particular circumstances they should have a service available for use by radio was probably one of the causes of inauguration of this bureau.

Q. Is the type of service rendered by the Associated Press essential to the conduct of modern daily newspapers?

A. That is another type of question. We certainly think so. Especially if they are to remain with all of us who wish to be kept as well advised as possible of what is going on in the world, can have a news service which still undertakes to make accuracy and impartiality and unbiased reporting its mission.

Q. What is the status of the Associated Press in the industry?

A. What is the status?

Q. Yes.

A. This is a cooperative news organization.

Q. The largest of its kind or next to the largest, or what?

A. I shan't take advantage of the opportunity, Mr. Moscovitz. I am a little embarrassed by the question.

Q. I don't see why you should be.

A. There is only one conclusion that I might have. I think that it is a reputable organization and has reasonably good standing and a lot of us are devoted to keeping that standard if we can, at the same time I quite readily admit that we have a very healthy respect for our contemporaries. [fol. 204] Q. I assume that is true. But having all this respect, second, is your—are you considered as being a large organization or small one? Do you have competitors who are larger than you?

A. You are asking me a question that would be wholly an opinion, and I don't think my opinion is worth while.

Q. I think your opinion in view of the fact you have been associated with the Associated Press so many years, and are acting in an official capacity, from the time you spent in the industry is very valuable. I ask you what your opinion is. Who are your competitors.

A. Well, I should say the United Press—I believe it is the United Press Association. We have the International News Service, Universal Service. I think those are among the principal ones.

Q. Are they membership corporations, too?

A. No, my understanding is that they are strictly commercial organizations.

Trial Examiner Clark: Could you tell something in terms of the newspapers served, how they compare.

A. Yes, I could, I believe, although there again you get down to what someone might claim against another claim. That is one reason I have been reluctant in this whole matter. I do not like to claim things. Our membership today is in the neighborhood of 1390. The Associated Press you see is the only Press Association left today. We still have news agencies, but we have only one press association and consequently being a cooperative organization, and a non-

[fol. 205] profit organization, everything we do is open to inspection. So the news agencies know everything that is happening within the Associated Press, but I can't tell you with any knowledge how many clients does the United Press serve, nor could I tell you how many clients the International News Service, nor the Universal Service have. All I can tell you is what I have read in their promotion matter, and so far as the United Press is concerned I think they are almost at a point to say they are serving as many newspapers as the Associated Press. I don't know. I have not yet seen any claims or statement from the International Service nor the Universal Service that they were serving a news service to any such total number of newspapers that the Associated Press has in its membership. I think they will go any way from 500 up to 1,000.

Q. As far as you know, you are still the outstanding organization in respect to service?

A. I think we are serving as many newspapers as any of the news agencies.

Q. Is the value of the service of the Associated Press to its members dependent upon its promptness and the fact they can receive the news earlier than competing publications?

A. No. There are a great many things involved there, Mr. Moscovitz. For example, if on a given story, we have a condition develop that requires the reporter of the Associated Press taking the time which is necessary to definitely confirm, or definitely convince and assure the facts, and the circumstances of that story, that man takes the time to do it, even though the reporter from a news agency or several agencies alongside of him has already transmit-[fol. 206] ted to his service a story which they are ready to support. We are at all times ready to take the time that is required to make as certain as possible that we are right, even though we know that will result in some slight delay.

Q. Certainly it is of considerable value to your members to know they receive the news earlier than competing publications. They don't want to receive stale news?

A. There is a value, but most of our members at the same time will still support the Associated Press, I think, if the Associated Press may trail a few moments. But the Associated Press story may be right.

Q. I am not even assuming that the Associated Press is going to be wrong in its story. Assuming that it is going to be right in its story, is it not of great importance to the members of the Associated Press that it receives its news as soon as if not sooner than competing publications receive the same?

A. Extremely desirable to have them do so, yes.

Q. Suppose the member publication received its news later than the competing publications continuously, of course, your service would be of no value?

A. That should not happen, and when that day arrives, Mr. Moscovitz, we are through.

Q. That is true. The answer is that.

A. It is of importance, of course, Mr. Moscovitz. It is not an importance to the point that I am trying to make and it is an important point from the members' standpoint. It is not of sufficient point but what we will take a licking if necessary any time to be accurate.

Q. I am assuming the accuracy.

A. Certainly, that is our business.

[fol. 207] Q. Is there any relationship between the City News and the Associated Press?

A. We subscribe to the City News Bureau.

Q. What is the City News Bureau?

A. My understanding of the City News Bureau is that it is an organization organized by the newspapers in New York for the purpose of gathering for these newspapers that great amount of news which is of a nature sometimes, routine, but of a character that is just as suitable for a newspaper to have collected by an agency like the City News Service rather than going to the expense themselves and trying to cover New York City or the Metropolitan District with the tremendous staff that would be necessary for each of the individual newspapers to try to do. The Associated Press receives the news reports of the City News Bureau. There is one member of our staff who is a member of it,—I don't know just what the name of the Board is, whether trustees. We have one member on the Board that supervises the City News Bureau.

Q. As a member of the Associated Press?

A. The staff.

Q. A member of the Associated Press staff, and who is that person?

A. I believe Mr. Brooks, the Executive Night News Editor is now the representative of the Associated Press.

Q. What position does he hold with the City News?

A. None.

Q. What is his relation with it?

A. I say he is the representative. You asked me who is the representative of the Associated Press on the City News Bureau Board.

[fol. 208] Q. That is right.

A. I believe it is Mr. Brooks who is the Executive Night News Editor.

Q. When you say City News Board——

A. I used the word because you said that this group who supervises the City News Bureau was described as a Board. I don't know.

Q. Is there any one at the Associated Press who is also connected with the City News?

A. No, except the representative of the Associated Press in this group which manages—I don't know whether it is a Board of Directors or a Board of Trustees, or what it is they call this board, board of directors, I guess is what you would call it. Each newspaper has a representative on this. The newspapers participating in the City News Bureau have a representative on a Board. I think they call it the Board of Directors, although I am not sure, and the Associated Press as a subscriber to the City News Bureau also is entitled to a representative on that Board. And the representative of this, the Associated Press on this Board is Mr. Brooks, the Executive Manager.

Q. Is the news that you receive from the City News news which you consider for transmission throughout the various parts of the country?

A. With all due respect to the City News Bureau, Mr. Moscovitz, I must say there is very little in the City News Bureau that ever gets out of New York City. Certainly very little of it compared with the tremendous volume.

Q. You mean compared with the tremendous volume of your work which does go out?

A. I am thinking of our complete report as a whole. It [fol. 209] is the representation of that news would make a very, very small percentage of what might make up the news report for one day.

Q. How many people are employed by the Associated Press throughout its entire operations, do you know?

A. If it is necessary to answer the question I will, Mr. Moscovitz, but I don't like to divulge that information for the benefit of some of our contemporaries.

Mr. Cannon: I don't think trade information should be given to the public unless it is pertinent. I don't see any pertinency in it.

By Mr. Moscovitz:

Q. Well, I of course consider it pertinent and I would like very much to have it answered. It goes materially to the question of the magnitude of operation, and it might be necessary.

A. There isn't the slightest objection to telling you for the purpose you are asking, I haven't any hesitancy about that at all; it is just that I don't like to have it appear of record for the benefit of some of our people who are interested in our business.

Q. If I could see where the divulgence of the number of employees was a divulgence greater than anything else that has been given here today, I would agree not to press the question, but under the circumstances I must insist upon it.

Trial Examiner Clark: Well, I don't quite see why you shouldn't answer it; maybe I don't appreciate all the sig- [fol. 210] nificance of not answering it. Your directory contains a large amount of information; I take it that the directory is not complete.

By Mr. Stratton:

A. The directory doesn't contain all the employees of the Associated Press.

(Off the record discussion.)

By Mr. Moscovitz:

Q. Well, can you tell me Mr. Stratton how many people are employed by the Associated Press in its New York City operations? Approximately is all right.

A. Didn't I supply that information to you, Mrs. Herrick?

Mrs. Herrick: Yes.

By Mr. Stratton:

A. Well, that is approximately correct, the figure I gave Mrs. Herrick, which I have forgotten myself, but there has been very little change in that.

By Mr. Moscovitz:

Q. It is my understanding that that was just one department. If you don't have these figures at your finger tips Mr. Stratton, I am perfectly agreeable that you get them and introduce them at a later date in writing to the Trial Examiner, and then let it be made part of the record, but I must insist upon the answer to these two questions. Now in so far as the number of employees employed by the Associated Press in its entire operation, if you would give me an approximation, or if you would give me a figure in between two figures so that we could have an approximate determination, I would be satisfied.

A. Would that be all right, Mr. Cannon?

[fol. 211] Mr. Cannon: Whatever you think you are willing to do in that respect.

Trial Examiner Clark: Do you want to submit a statement in writing?

By Mr. Stratton:

A. I would be perfectly willing to answer your question immediately. As I say, there is no reason why we have the slightest objection to giving you, Mr. Moscovitz, or you, Mr. Dean Clark, or you, Mrs. Herrick, or any others interested—to giving you that for your information, but we don't like to have that published and there are too many people sitting around waiting to quote in places, and it is just as well we don't state it, if it is not necessary.

Q. It is necessary that we get this answer.

A. I would be glad to give you not alone a statement of what our total employees are, but the total number of employees in the New York office.

Q. Would you be willing to submit the answers to these two questions to Mr. Clark, the Trial Examiner?

A. Certainly.

Q. For his consideration as a part of this record?

A. Certainly.

Q. The first question would be—How many people are employed by the Associated Press throughout its entire operations? And the next question would be—How many people are employed by the Associated Press in New York City?

A. Yes sir.

Q. Will you tell me what the approximate monthly payroll of the Associated Press is?

Mr. Cannon: I think that is in the same category.

[fol. 212] Mr. Moscovitz: If Mr. Cannon is going to make objections I suggest he withdraw his special appearance.

By Mr. Stratton:

A. Mr. Moscovitz, if you would just sort of give me the credit of being consistent in the matter I think if I had had a chance I would have said that I felt the two questions had a parallel—and if it is necessary for us to give you that information, that will be supplied also.

Q. That will also be supplied at the same time?

A. And in the same manner.

Q. And what is its annual volume of business in terms of money?

A. Volume of business? You mean income from our assessments?

Q. Yes.

A. Now that is published, Mr. Moscovitz, so I haven't any hesitancy about giving that to you. For 1935, I believe the income from assessments for 1935 was about $9,150,000, or something of that sort, something around that figure.

Q. Tell me whether or not the Associated Press engages salesmen in its business or in its operations?

A. No, we do not have salesmen—we haven't anything to sell.

Q. Do you have solicitors?

A. We don't have solicitors. What we have Mr. Moscovitz, and that is only of very recent origin, we have a number of men in the respective sections of the country whose business it is to contact our members to learn if the service is satisfactory, to pick up complaints, to in any manner possible improve or otherwise render a service to the member that would make his Associated Press member-

[fol. 213] ship more valuable. The only thing that he does that has to do with what I know you are trying to encom-

pass in this thing, which is from a commercial corporation standpoint, the only thing that any of these men do would be to keep acquainted with newspapers which might become members of the Associated Press, and to, if possible, learn what the prospects or the opportunity of that newspaper is for becoming a member of the Associated Press, and reporting that information.

Q. Like missionary work?

A. Educational and missionary.

Q. For the purpose of keeping a satisfied membership and building up——

A. It is missionary, education, contact work——

Q. Promotional?

A. Promotion in a sense of making a member realize the real benefits that he has from the service of the Associated Press.

Q. Getting new members?

A. Because we have so many members I am reluctant to say, who still don't utilize the fullest advantages of this organization. We have a great many things yet available for the benefit of the members. Some of them don't know it, some of them haven't appreciated it, some of them can't adapt a great many of the things available to them as a member of this corporation, and it is the purpose of these men, when they have an opportunity, to cover that whole range of subjects.

Q. And also to build up new membership if possible?

A. To keep abreast of any newspaper that might become eligible for membership in the organization.

[fol. 214] Q. What do you call these people?

A. They have no title, they are just——

Q. Missionaries?

A. They haven't any title; they don't sign as a title and they don't have any.

Q. Would you call it the promotion department?

A. Membership promotion, I suppose.

Q. Don't you have a particular department here in New York City which is engaged in that type of activity?

A. That is what I am referring to, Mr. Moscovitz, this recently created group.

Q. Who is the head of that department?

A. Mr. Stanley.

Q. Ed. Stanley?

A. Yes.

Q. That is a recent appointment?

A. Yes.

Q. Do you have solicitors who travel throughout the world in your feature service work?

A. No sir.

Q. Do you have solicitors for feature service?

A. No sir, the only work of that character would be done by the bureau chief or our own representatives, who in their contact with the members—it is part of his business to keep before a member everything that the service has which is available to him. Naturally a bureau chief in any state undertakes to make a member realize the various services, including the feature service, which is available to him. A good many don't take advantage of it.

Q. Would that go for all the services?

A. Oh yes.

Q. Of course this is brought to the attention of non members also, I assume?

A. Oh no sir.

Q. Isn't there an effort made by the promotion department to interest new members?

[fol. 215] A. No, the only extent that that subject is gone into is that which I have just described, Mr. Moscovitz. If we find a newspaper which is eligible and can qualify for membership in the Associated Press, and has no entanglements, and there is nothing to preclude him coming in and becoming a member, why such a newspaper is always in mind and reported by these men, whether it be the bureau chief or one of these recently created contact men.

Q. You stated before that the Associated Press had nothing to sell?

A. No.

Q. And it is a matter of rendering of service; is that your idea?

A. Well, we are just a membership corporation, Mr. Moscovitz, and what we produce in the way of news and services is the service which the members have produced for them, and they pay their proportionate assessment and the cost thereof. It is not anything that is available to anybody else except a member of the Associated Press. Of course as you know our charter, our by-laws, in themselves answer your question.

Q. Is there a declaration of dividends by the Associated Press for its members?

A. It is a cooperative, non-profit organization, Mr. Moscovitz.

Q. Is it cooperative by the member paying an assessment and the Associated Press giving the members news?

A. Yes sir.

Q. And that is where it stops, isn't it?

A. Yes, it costs so much to run the Associated Press, it cost so much in 1935 and the members of the Associated Press have to make up that cost.

Trial Examiner Clark: Might I ask two questions right [fol. 216] in this connection? I see that the by-laws provide for both a surplus and if necessary a bond issue.

A. The by-laws provide for that?

Trial Examiner Clark: Yes. I was wondering if those powers have been exercised.

A. I don't know myself; are you acquainted with that?

Mr. Cannon: Bonds have been issued. Bonds are provided for and the bonds have been issued where there has been a waiver of interest under which circumstances the holder of the bond has the right to a so-called bond vote.

By Mr. Stratton:

A. I am unable to give you much help on that question.

By Mr. Moscovitz:

Q. Who would be able, Mr. Stratton?

A. I think it is a corporate matter that probably would go back pretty far. That would be my assumption. I know it is something that would have to be investigated.

Q. Who of the Associated Press would be familiar with that situation?

A. I should say the Treasurer or the Assistant Secretary.

Q. What is the name of the Treasurer?

A. Mr. Curtis.

Q. What is his first name?

A. L. F.

Q. What is the name of the Assistant Secretary?

A. Mr. Elliott.

Q. Jackson Elliott?

A. Yes. That information can be obtained if it is required.

[fol. 217] Q. If we decide that we would like to go further into that question could we get that information?

A. Well, if it is pertinent to what—Dean Clark brings up the question. That is a question that will have to be submitted to either our counsel or whoever it will be that has that matter.

Trial Examiner Clark: So far as my question is concerned, I was interested only in getting the general set-up of the organization. I am not asking for further information than that. If you have any interest along that line, Mr. Moscovitz, you make your own decision about that.

By Mr. Moscovitz:

Q. Does the Associated Press have a policy of transferring men to New York from bureaus throughout the nation?

A. Well, it is not a policy as it concerns New York any more so that any other bureau, Mr. Moscovitz. We transfer men between bureaus in all parts of the world, and in each case it is determined because of the particular merit or need of a situation that requires a man of a certain character or a certain ability. It is merely a condition of supplying men in places where they are needed, like any company that has several offices will supply their staffs.

Q. You mean men from other parts of the country may come here?

A. We send men from New York to other parts as well as they come here, and we send them from the North to the South and from the East to the West.

Q. It is not uncommon, is it?

A. No.

Q. Can you name the members of the New York staff [fol. 218] of the Associated Press who have weekly regular features appearing in newspapers throughout the country?

A. Not offhand I couldn't, Mr. Moscovitz.

Q. Would this refresh your recollection? Members of the New York Staff of the Associated Press whose weekly regular features carry a by-line and appear in newspapers throughout the country. I ask you if C. E. Harner is one?

A. C. E. Harner? I personally do not know that he had any regular, what do you call it, feature, Mr. Moscovitz.

And another thing, Mr. Moscovitz, I haven't any idea how much publication attends the efforts of any of these particular individuals because we send it out, but whether a newspaper publishes it or not is something else. I couldn't tell you how extensively anything that a reporter writes, is used.

Q. But would you say that features by these persons were sent out for use?

A. Well, I don't know the first one you asked about, Mr. Harner. I didn't know he had any regular feature appearing under his by-line.

Q. Devon Frances?

A. I think Mr. Frances has.

Q. R. H. Hippelheuser?

A. Yes.

Q. John Selby?

A. That is feature service.

Q. He has the weekly music review for Sunday.

A. I think that is likely, Mr. Moscovitz.

Q. Willard Keefe?

A. He wrote a theatrical piece at one time; whether it is still going I don't know.

Q. And Warren A. McNeil—a weekly art column, and Sunday?

A. I don't know that.

Q. Do you know whether or not Eddie Brietz?

A. Yes, I think he has a sport column.

[fol. 219] Q. And that is transmitted on the regular wire facilities from New York.

A. It is transmitted; I don't know where it is sent.

Q. I say from New York?

A. Yes, if he happens to be in New York; if he should happen to be out on an assignment when the time comes for that feature to be transmitted he sends it from wherever he is, I presume.

Q. And Victor Eubank?

A. He is in the financial staff. I don't know whether it is a regular feature, but he is a writer in the financial service.

Q. George A. Phillips?

A. Also in the financial department. What he has I don't know.

Q. Bernard S. O'Hara?

A. Also a member of the financial staff, but what he writes I am not personally acquainted with.

Q. And there are others in the financial department who also write such news?

A. I think the staff is a little larger than that; you have mentioned three.

Q. Are there any members of the New York staff whose by-lines are frequently in the news report and whose product is disseminated on the regular news facilities and appears in newspapers throughout the nation? Can you name any? That is in the news report?

A. You say the news report?

Q. Would you say Dale C. Harrison?

A. Yes.

Q. Maurice Watson, who was formerly with the Associated Press?

A. I think Maurice on several occasions had stories.

Q. R. H. Hippelheuser?

A. Yes.

Q. Homer McCoy?

A. I am not so well acquainted with that.

[fol. 220] Q. Mary Elizabeth Plummer?

A. Yes, I have seen some of hers.

Q. Pat McGrady?

A. Not of my own sight.

Q. B. L. Livingstone?

A. Not of my observation; that is, not that I have seen. They may have.

Q. To your best information and belief?

A. I haven't seen it.

Q. Gardner L. Bridge?

A. Again, that I haven't seen.

Q. On your sports stories, Alan J. Gould?

A. Yes.

Q. Eddie Brietz?

A. Yes.

Q. Hugh Fullerton?

A. Yes.

Q. Herbert Barker?

A. Yes, I think I have seen some of Barker's.

Q. Bob Cavagnaro?

A. I don't know whether I have seen anything of Bob's under a by-line or not. I think it is likely he has at sometime or other; he should have.

Q. Orlo Roberston?
A. Yes.
Q. And in your financial stories, Victor Eubank?
A. Yes.
Q. Rader Winget?
A. Yes.
Q. Bernard S. O'Hara?
A. I am not certain about that.
Q. George A. Phillips?
A. Nor Phillips.
Q. Thomas Flannagan?
A. Nor Flannagan.
Q. You don't know about those?
A. Not by my observation.

(Five minute recess.)

Q. I would like at this time, Mr. Examiner, to have this marked for identification.

[fol. 221] (Document referred to marked for identification, Board's Exhibit 11—Witness Stratton.)

By Mr. Moscovitz:

Q. I would like to introduce Board Exhibit No. 11, marked for Identification, at this time. It is the certified copy of a bill of complaint and affidavit in the Associated Press case which is now in the Circuit Court of Appeals, and entitled: "The Associated Press, a corporation, vs. KVOS, Inc., a corporation". I offer it at this time.

Trial Examiner Clark: What is this a bill to enjoin a radio broadcasting station?

By Mr. Moscovitz:

Q. Yes, and a piracy case which arose in the Ninth Circuit and is now, as I understand it, on appeal, and in which originally the Associated Press secured its injunction.

Trial Examiner Clark: Admitted.

(Document referred to received in evidence and marked Board's Exhibit No. 11—Witness Stratton.)

By Mr. Moscovitz:

Q. I would like to have this marked for identification.

(Document referred to marked for identification, Board's Exhibit 12—Witness Stratton.)

[fol. 222] Q. I offer at this time Board Exhibit No. 12 which at this time is marked for identification, in evidence, which is a certified copy of the Associated Press trademark now in use by the Associated Press.

Trial Examiner Clark: Admitted.

(Document referred to marked Board's Exhibit No. 12 and received in evidence—Witness Stratton.)

By Mr. Moscovitz:

Q. I offer at this time Board Exhibit #13 which is a certified copy of Strikes and Lockouts in the Newspaper and Periodical Printing Industry in 1934, and in January to July, inclusive, 1935, Major Issues Involved, under the signature of Frances Perkins, Secretary of Labor.

Trial Examiner Clark: Admitted.

(Document referred to received in evidence, marked Board's Exhibit No. 13—Witness Stratton.)

By Mr. Moscovitz:

Q. Mr. Examiner, I don't have very much more to introduce in the way of interstate commerce, nor do I have many more questions to ask Mr. Stratton, but before asking Mr. Stratton the few remaining questions that I have there is some material that I would like to introduce for [fol. 223] the purpose of laying a foundation. I find that it will be impossible for me to do that until the first thing in the morning.

Trial Examiner Clark: Very well then, I think we can suspend now if you have nothing more at the moment, until nine-forty-five tomorrow morning.

(Whereupon, at 5:40 o'clock, p. m., an adjournment in the above-entitled case was taken to 9:45 A. M., April 8, 1936.)

(Adjournment.)

[fol. 224] BEFORE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-C-28, II-R-3

In the Matter of THE ASSOCIATED PRESS

and

AMERICAN NEWSPAPER GUILD, by the National Executive Board Thereof

Room 433, Old Post Office Building, New York City, N. Y.

April 8, 1936.

The above entitled matter was resumed for hearing, pursuant to adjournment taken April 7, 1936, at 10:00 o'clock A. M.

Before Dean Clark, Esq., Trial Examiner

Appearances:

David A. Moscovitz, Esq., Attorney for the Board.

[fol. 225] Greenbaum, Wolff & Ernst, Counsel for the American Newspaper Guild, 285 Madison Avenue, N. Y. C.

Morris L. Ernst, Esq., and Callman Gottesman of counsel.

Davis, Polk, Wardwell, Gardiner & Reed, Counsel for Respondent, 15 Broad Street, N. Y. C.

William C. Cannon and Harry W. Bissel of Counsel.

Proceedings

Trial Examiner Clark: Well, I think we may resume the hearing.

LLOYD STRATTON, witness on the stand at time of recess, resumed the stand and continued his testimony as follows:

Direct examination (continued).

By Mr. Moscovitz:

Q. I asked, during the proceeding yesterday, Mr. Stratton, that you bring in certain information which you did not have at your finger tips yesterday. Have you brought it?

A. I have. That is, all that I could obtain. Using the memorandum that Mrs. Herrick handed me here as questions outstanding.

Q. Would you read the questions and answers?

A. I will read from them as represented here. I do not [fol. 226] know if I can rephrase your questions as well as you ask them. Essentially, the way it is, is did we have photographer at the New York office assigned to the Kentucky Derby in 1935. Yes. The same question with respect to the world series at Detroit in 1935. Yes. The same question with respect to the Hauptmann case. Yes.

Q. That was in New Jersey?

A. In New Jersey, yes, both Flemington and Trenton. The same question with respect to the Regatta at New London, Connecticut. Yes. That completes that series of questions. Then there is another question, a theoretical case on what assessment is based. I am just taking these in the order that they appear here. I submitted that question and I think perhaps the best way to give you that information, Mr. Moscovitz, is to do a most unusual thing, namely, the making available to you of a matter that heretofore has been of extraordinary private character between the Associated Press and a member. I understand that the information is desired to the point of making this information available to you, so we shall do it in this way, which will give you precisely the information as we supply it to a member who may be interested in the same question. It will be noted that this is a private circular. It represents to the degree as possible to put in writing an explanation of a very complicated formula. It is as complete as we can possibly make it. So, Mr. Moscovitz, here is the answer to that question.

Mr. Bissell: Is it all right for me to speak to the witness?

[fol. 227] Trial Examiner Clark: All right, sir.

(Witness consults with counsel.)

Mr. Moscovitz: I will have that marked.

(Document referred to marked Board's exhibit number fourteen for identification, Witness Stratton.)

Mr. Moscovitz: I will offer Board's exhibit number fourteen for identification in evidence.

Trial Examiner Clark: Admitted.

(Document referred to received in evidence marked Board's exhibit number fourteen, Witness Stratton.)

A. The next question appearing on this list, the number of pictures, weekly or monthly, from England and the number of pictures the Associated Press sends from the United States to England and also Radio Photo and the German company. The photos exchanged between the United States and the British company on the average weekly basis: From the British company to the United States, approximately four hundred; from the Associated Press of New York to the Associated Press of Great Britain, London, approximately four hundred; from the Associated Press Company in Germany to the Associated Press of New York, approximately one hundred; from the Associated Press of New York to the German Company, ap- [fol. 228] proximately one hundred and seventy-five; radio pictures from abroad to New York, an average of one every two weeks; from abroad to the United States, an average of one and one-half to two weekly. That is the end of that question. The name of the Domei Agency is the next question, which refers to the agency in Japan with which the Associated Press of the United States has exchange of news relationship.

By Mr. Moscovitz:

Q. Is that the one we referred to as the Rengo Agency?

A. Yes. The question was for the full name of that agency, I believe. Anyway, the name of the agency is Domei-Tsuchin-Sha. I believe that is it.

Q. Now, is that the name of the organization formerly known as the Rengo agency?

A. Formerly known as the Rengo Agency, plus the fact that there is another agency in Japan which was known as Nippon-Dempo. It also, Nippon-Dempo, also has been made a part of this Domei-Tsuchin-Sha.

Q. This is the name of the consolidation?

A. That's right. That is the end of that question. The number of employees in the whole operation of the Associated Press, and the number in the New York City office, number of employees in the New York City office, and the total payroll for each: That question is still being studied. As I explained yesterday when you asked the question first, I was a little hesitant to answer it because I thought it

might divulge information of benefit to parties other than those immediately concerned in this case, and I asked coun-
[fol. 229] sel whether he felt that I should reply, and you heard counsel's reply. Nevertheless I felt that if it were possible to make said information, privately for the information of the people who are here, I would not have any hesitancy in doing so. Subsequently, I learned from Mr. Moscovitz that even though he might like to do that, that anything we would submit that way, still would have to become a part of the record all the way through, so I felt then that I had better question counsel again about it, which I have done and whether or not the information, in the precise form that you have requested it, can be given at this time, is still subject to determination.

Q. So that we will be clear on it, Mr. Stratton all that I will want you to give me sufficient for our purpose, is approximations on this thing and the conclusion. There are, for instance, approximately so many employees in New York, just giving the figure; there are approximately so many employees throughout the operation of the Associated Press, just giving your figure. Then as to the financial sum involved, approximate figures as to that will be sufficient also.

A. Yes, I gathered that was the information you wanted, and which is virtually the way I submitted the question, but it is still undetermined, to my knowledge. Anyway, whether that would still not reveal a situation which we are hesitant to reveal, has not yet been determined.

Q. And when will you know?

A. Counsel, I believe, now is endeavoring to determine the question.

Q. Does the Associated Press have an arrangement or contract with the Venezuelan government?

A. No, sir.

[fol. 230] Q. Has it ever had?

A. Not to my knowledge.

Q. Has the Associated Press ever had an arrangement with Keystone Photo for the use of Associated Press photographs?

A. Yes, there was an arrangement, the terms of which I am not acquainted with, Mr. Moscovitz. As I understand it, it was an arrangement made whereby Keystone View Company would have the permission to dispose of pictures of the Associated Press which were no longer of news value,

or which were dead, I might say, from the standpoint of their original purpose.

Q. On the basis of a particular contract?

A. That I could not say.

Q. But the Keystone Photo organization is not a newspaper publication?

A. No, my understanding is that the Keystone picture organization is a news picture outfit.

Q. So that——

A. They distribute pictures to trade publications and magazines and non-newspaper plants.

Q. Then, it is not a member of the Associated Press?

A. No, sir.

Q. And that would be one situation where the Associated Press would sell its photographs to someone who is not a member of the Associated Press?

A. It is not a case of selling, Mr. Moscovitz, it was rather a means of taking care of a salvage operation.

Q. But wouldn't there be some consideration passed for handing over the pictures?

A. Oh, I should think so, yes.

Q. So that there would be payment for the pictures?

A. It was a type of service that was non-newspaper in [fol. 231] character. It served a field that was non-newspaper and also included a product which had lost its value, or ceased to have its value.

Q. But on that particular point, as to the loss of value, isn't it true that a picture of Huey Long taken by Associated Press was run under a Keystone caption during Huey Long's visit to New York about two years ago?

A. Oh, I couldn't say off hand whether Keystone View had a picture of Senator Long. I don't know whether that might fall into the type of material that Keystone View was eligible to receive.

Q. Does the Associated Press at the present time have a contract with Time magazine for photos?

A. Not to my knowledge, no, sir,

Q. Would you say that such a contract was not in existence?

A. I believe I would know of it if it did exist, and I don't know of its existence.

Q. Mr. Stratton, keeping in mind the organization of the Associated Press here in New York City, the manner in

which it is set up, what would you say would happen to the receipt and dispatch of news if, for, say, a period of one hour, taking three to four in the afternoon, there was a complete suspension of work by the employees?

A. I am very sorry, Mr. Moscovitz, but I can't put the whole question together.

Q. All right. We will take it this way:

A. If you can be a little more specific——

(Question read).

A. You should like to know what would happen?

Q. Yes.

A. That is a poser—I don't quite know how I could answer that question.

[fol. 232] Q. Is it a problem?

A. It is a problem to answer your question in the way you have asked it, Mr. Moscovitz, and to accomplish what you wish. Of course, my mind immediately, in a situation of that kind, my mind begins immediately to move in the direction of the effort and the measures that would be necessary to meet such a condition and possibly overcome it.

Q. But that is something which would arise after the situation had arisen. It would be a disturbance?

A. In a normal situation, of course. How serious a disturbance I am not prepared to say. The conditions at the time and our particular fortitude and ability to meet and handle such a condition would be elements in determining the outcome and seriousness of the disturbance of such a condition.

Q. I am afraid that answer is not quite responsive to my question, Mr. Stratton. I will put the question this way and see if it will help you: Suppose all the editorial employees of the Associated Press here in New York City went out on strike, and that department was completely shut down for the day, what would the effect be on the handling of the news, the transmission of the news, the receipt of the news. Would newspapers throughout the country receive news which they normally receive from the New York City office during that day? Would there be a stoppage?

A. That is a contemplative question and a contemplated situation, so I am afraid it would be difficult to make an

answer that would be other than theoretical in meeting the condition. I could not tell the degree of loss or upsetting [fol. 233] of service. I do know that there would be a possibility of our mitigating the situation to a certain degree by measures which we should have to resort to or try to employ.

Q. I know, but you are evading the question.

A. I am not evading the question.

Q. Because those are things that would arise after the situation presented itself. The question is this: From your testimony, I understand that people that work in the editorial department and other places in the Associated Press are skilled people and the best people you can possibly get, and I adduce from that, that they are people that are not easily replaceable. Now assuming the picture of the Associated Press as you know it through the years, what would you say the immediate effect, regardless of what you do to fix it up subsequently, the immediate effect of a strike in the editorial department of the Associated Press would be on the transmission of news, what would the immediate effect be on the receipt of news?

A. If you mean that at three o'clock in the afternoon, out of a clear sky, the management of the Associated Press was advised that on that moment the employees of the New York office were striking,—I should say that there would be a momentary, a temporary condition, which would cause a lapse in the normal movement of a report of our news, distribution as well as incoming. Whether the length of that disturbance, the length of that condition, would be sufficient to seriously impair the service, is something I can't answer, because I don't know what measures might be taken, or what conditions might enter that would temper [fol. 234] the fullest effect of what I know you want me to reply to if I can, and that I cannot say because I don't know.

Q. You have no opinion?

A. I don't know. Quite candidly, I don't know.

Q. What time does your news go out for financial reports?

A. Oh, it goes out at various periods of the day, Mr. Moscovitz, beginning, oh, around half past nine in the morning and continuing right through the day.

Q. Well, suppose you were faced with a situation at the Associated Press where the editorial employees went out on strike, all of your editorial employees?

A. You mean throughout the service?

Q. Throughout the Associated Press in New York City, and your news was coming in and it had to go out, how would the situation be met?

A. Well, sir, if I had had any idea that we would have a condition of that kind to meet, I would probably have given some thought to it, and I might have some ideas as to how it would be met but I am frank to say it is a question we have not considered. It is a question we have not prepared for.

Q. In other words, you would be entirely unprepared for such a situation?

A. Well, to the extent that your question applies, yes. You might say that we are right now unprepared for such an eventuality, as far as I know, we would be. I certainly know of no preparations for any such thing.

Q. Would news be transmitted as it is normally transmitted if such a situation presented itself?

A. Not normally, for the moment.

Q. Do you mean until such time as there could be sub-
[fol. 235] stitutes placed there?

A. Until such time as the situation can be met with whatever facility or whatever measure or whatever means we have for revamping or readjusting or realigning, or anything that might be necessary.

Q. But there would be a disruption of service, wouldn't there?

A. If you tell me at three o'clock that there is to be a strike and they go out right away, I should say, of course, there would be a momentary disruption there.

Q. Why do you say "momentary"?

A. Because I would only conceive it to be a natural thing for us to do to try to minimize the length of time that such a condition would exist. I think that it would be possible to provide a service, at least taking care of the general requirements within a certain time—how long I don't know. I haven't any idea.

Q. Well, then, now, Mr. Stratton, you were produced to testify by Mr. Cannon at request made of Mr. Cannon by the National Labor Relations Board for the co-opera-

tion of his office in adducing commercial testimony that we have been going into the last day. Is that so?

A. Well, I trust that you will extend some of that co-operation to a willingness and a friendliness on my own part to co-operate, Mr. Moscovitz.

Q. I will be very glad to extend to you that element, and it was in response to a letter that we sent to Mr. John W. Davis, requesting that someone be brought in who is qualified to testify?

A. That is my understanding.

Q. And in response to that, you were produced. That is true?

A. I am produced.

[fol. 236] Q. And I have never, at any time, gone over any of this testimony with you before, have I?

A. No, sir.

Q. Never saw you to speak with you about any of this previously?

A. Not any of this testimony.

Mr. Moscovitz: Mr. Examiner, Mr. Ernst would like to ask Mr. Stratton a few questions.

Mr. Ernst: I will not go over any of the previous material, just a few points.

By Mr. Ernst:

Q. I want to ask a few questions to solve the question of profit motives, the Associated Press being a non-profit making organization.

The Witness: May the witness ask a question? Please, do I understand from my counsel that I am to answer questions.

Mr. Bissel: Your counsel is present.

The Witness: I asked because I understood there was some question made about appearances.

Mr. Bissel: All right, go ahead. We understand the questions are going to be addressed to interstate commerce.

The Witness: It is all right with me. I will be glad to answer, except that I want to make sure.

Mr. Ernst: May it be said on the record that the Newspaper Guild has not consulted with Mr. Stratton or anybody in regard to the testimony, and as far as we are con-

[fol. 237] cerned, we would like it noted that he is an opposition witness in essence.

By Mr. Ernst:

Q. May I ask you how many daily newspapers are there in the United States, approximately?

A. The last information we have, Mr. Ernst, I should say, would be in the neighborhood of two thousand daily newspapers.

Q. And about how many daily newspapers are members of the Associated Press, approximately?

A. About one thousand two hundred and seventy five, we will say.

Q. Of the one thousand three hundred and ninety member newspapers that you mentioned yesterday, approximately one thousand two hundred and seventy five are in the United States?

A. No, pardon me.

Q. I think you are quite wrong.

A. You are now asking how many members of the Associated Press of our total are located within the United States.

Q. No, I asked how many daily newspapers, members of the Associated Press, are located in the United States, approximately? Would you say a thousand?

A. Say twelve hundred, Mr. Ernst, something like that.

Q. Would you say that of the remaining eight hundred papers, that a goodly number of them are published in towns of five to ten thousand population and have very small circulation, and in many cases are part of printing shops that print calendars and little material locally in a small town?

A. I couldn't say of direct information. I don't know.

Q. If I say to you that is a fact, you wouldn't think it is unbelievable?

[fol. 238] A. I wouldn't question it.

Q. Now, is there a single daily newspaper, member of the Associated Press, that is a non-profit making entity itself?

A. That is a question I could not answer categorically, Mr. Ernst, because I don't know. We may have some members some place.

Q. But off hand, it is a fair statement to state that practically all of the members of the Associated Press are profit making entities?

A. I should say that the average newspaper, which is a going concern, in publishing a newspaper, is in the business as a business, certainly.

Q. And that they are not themselves non-profit making cooperative entities?

A. Any business so operating would not be, no.

Q. Now, what would you say the value of an Associated Press membership is roughly, in New York City? Now, let me give it to you so that you can answer it quickly. They are spoken of generally as franchises, as you know, and I ask you approximately what is the value of an Associated Press franchise in New York City to a paper that now owns one?

A. I have not the slightest idea, in New York City or anywhere else.

Q. Do you recall, for example, when Roy Howard's organization purchased the "World" and took over the franchise of the Associated Press and later discarded the franchise, in effect, gave up the membership, that it was generally reported in the press of the land that he had, in effect, thrown into the discard something of the value of [fol. 239] five hundred thousand dollars? Do you recall that at all?

A. I don't recall that.

Q. Do you recall any other figure than five hundred thousand?

A. Well, if there was any figure of the kind mentioned, Mr. Ernst, it would be purely something that is speculated among the persons who were writing it or reporting it. Certainly it had no connection with any value of a membership placed by the Associated Press, because we don't know of a value. It has no financial value so far as the Associated Press, itself, is concerned.

Q. I didn't mean the Associated Press. You, as a newspaper man, for a moment, I will ask you, in your judgment, the membership of an Associated Press by a newspaper in case the ownership of the newspaper is selling out for a profit, the franchise of the Associated Press has no value?

A. I should say it has a value, Mr. Ernst, but I have no idea what its financial value is.

Q. What the amount is?

A. No, sir.

Q. But, as far as you know, it may be worth, in certain circumstances, one hundred thousand dollars, ten thousand dollars, or five thousand dollars?

A. I would not have an opinion on that.

Q. But it has some value in dollars?

A. I couldn't even admit that because I don't know.

Q. Now, aren't there situations where newspapers throughout the country have wanted to get a franchise, a membership, in a certain locality and have not been able to obtain one?

A. Mr. Ernst, franchise is the improper word.

Q. I said that was the equivalent of what you called [fol. 240] membership—let's don't quibble about words.

A. There is no franchise in the Associated Press at all. It is membership.

Q. I am using the trade term.

A. Membership is the trade term.

Q. It is not among newspaper men? We won't quibble about words.

A. I should imagine there are some daily newspapers which would like to have a membership in the Associated Press, which have been unable to obtain it for reasons of any number.

Q. Now, you assess, as you say, to your members, the cost of operations. You are unable to assess that for any periods, say for a year, counting out the dollars as to your cost. Isn't that true?

A. We are able to?

Q. You are unable?

A. That's right.

Q. And at times you feel you have to build up some reserve, war, unforeseen emergencies so the assessment may run a little over for a certain period, the actual cost and the balance on hand, as I take it, acting as a barometer would be reflected in the following year in making the assessments?

A. If you mean if there is any excess of income over expense for the previous year, certainly it would be carried over into the following year and be so shown on the financial statement.

Q. Have you got a copy of the financial statement with you?

Mr. Ernst: I would like to call for the financial statement, any financial statement of the Associated Press.

Mr. Bissel: We have not produced any.

[fol. 241] By Mr. Ernst:

Q. Do you know, off hand, whether there is a balance of net worth shown on the financial statement?

A. Some years there has been and some years there has not been, that is my recollection, Mr. Ernst.

Q. Is the financial statement a published statement?

A. The Treasurer's statement is published.

Q. And it is public?

A. Each year.

Q. Could you get a copy?

A. It is made available to the membership of the Associated Press.

Q. And it is not published to the public generally?

A. That, I couldn't say.

Q. Will you bring in, after lunch, a copy of the financial statement for the last three or four years, two years, whatever you have available?

A. I can get them for you, Mr. Ernst, if it is felt that they are necessary.

Q. Will you bring them down and then we can put up to the Examiner the question as to whether the statements are material and relevant and should be admitted. On the statement, there will appear, will there not, an item of bonds outstanding? Isn't that right?

A. I can't say positively, Mr. Ernst. I think we will have to let the statement itself show what it shows.

Q. Are there bonds outstanding?

A. That I cannot say off hand.

Q. Who will be able to come down from the Associated Press to answer questions along the following lines, very simply: As we understand the facts, we want to ask whether this is true, that there are bonds outstanding; that the bonds were issued in order to get some capital for promotion and [fol. 242] expansion purposes; that the bonds carry voting powers, and that in effect the holders of the bonds have the domination of the Associated Press. We would like to in-

quire whether that is the truth. Who, from your organization, could you have down here to give us the facts along that line which goes to two points, may I say, Mr. Examiner, one to the question of the profit motive point that has been raised by Mr. Davis' office; and the other to the question of a co-operative.

Mr. Bissel: We have produced this witness, Mr. Examiner, on the question of interstate commerce and we do not feel that these questions relate, or are at all essential to the question of interstate commerce, and we, I regret to say, do not expect to produce any papers or any further witnesses for that purpose.

Trial Examiner Clark: I think the issue is limited to interstate commerce at the present time because we are still dealing with the motion to dismiss, and the real question would be whether this evidence bears on the interstate commerce issue.

Mr. Ernst: Will you hear me on that a moment? As I take it, the legal theory, is that wherens there are operations here in interstate commerce, and across state lines, this organization is not engaged in interstate commerce because it is non-profit making, and in the category and effect of an eleemosynary institution legally, therefore not [fol. 243] commercial, and because it is non-profit making and co-operative, some of its operations going across state lines, it nevertheless does not come under the constitutional provisions relating to interstate commerce, not being commerce because it is not profit making and it is co-operative. And, therefore, it seems to me that these questions are an integral part of the questions of commerce. I don't see how they can be divided as long as that defense has been put up by Mr. Davis. It has no bearing on any other phase of the question, but the commerce phase, the non-profit angle, doesn't relate to Morris Watson, doesn't relate to representation,—it relates to nothing but commerce.

Trial Examiner Clark: Do you want to comment on this, Mr. Moscovitz?

Mr. Moscovitz: Well, I think too as Mr. Ernst does, that it is important that we consider this aspect of the commercial question. However, the annual reports, financial statements of the Associated Press are issued for public consumption, in that there are certain copies of them in various libraries and other places, and if Mr. Stratton objects

to bringing in such a copy, I would be very glad to subpœna one for the purposes of examination from a library, but it would expedite matters considerably if he would bring one in.

The Witness: That shall not be necessary at all, Mr. Moscovitz. I will be glad to bring one in.

[fol. 244] Mr. Bissel: If that is the case, we will have them here for you.

Trial Examiner Clark: I have the feeling that the general set up of this company is, of course, vital to this issue. I am not quite sure how much more we need in the financial statement. Of course, there appears in the By-laws that there is power to issue bonds and a certain provision as to voting power. We are getting a pretty extensive record on interstate commerce. Of course, we need to have that, and we want to have everything relevant, but I am not quite sure how much more we can get except the general financial set up which, I understand, we will get from the statement.

Mr. Ernst: There are just two elements, Mr. Examiner, and we will be very brief: One, are there bonds outstanding and if so, how many; and two, how many members hold bonds, and how many votes do those members have in relation to the others. I think that goes to the heart of the defense, insofar as the defense uses the word "co-operative" and a non-selling organization, because there is profit domination of the Associated Press by a small group of people, and it is what, in Europe, has been called a C. M. B. H. instead of a G. M. B. H., a well-known form of organization, co-operative—"Gesellshaft mit beschrenktend handen"—and it is just a little distinct from the situation Mr. Stratton testified to yesterday on the German company.

[fol. 245] Trial Examiner Clark: I think it would be well to know how far the actual voting power is among the bond holders.

Mr. Bissel: Mr. Examiner, our feeling is that this question is tending toward the social and political side, and we have not produced the witness for that purpose.

Trial Examiner Clark: I think you are correct on the point that he is not produced for that purpose. The question is really interstate commerce but it seems to me that under your allegations that this is not interstate commerce,

that we really have to know what the set up really is. I have not the feeling that we should go very much further into the question than we have gone, but it does seem to me that the two suggestions made now are relevant to the issues as to the organization, and fall in line with Mr. Stratton's own testimony. He has testified to the set up. This explains a little more what the set up is, and I would be disposed to rule that we should know, first, the amount of bonds outstanding, and second, what that actually means in terms of control in the By-laws.

Mr. Bissel: The By-laws are in evidence, Mr. Examiner. As to the amount of bonds outstanding, I think we can obtain that information, but as to showing what the nature of the control is, we cannot see that that is essential to the question of interstate commerce. We have attempted [fol. 246] to cooperate with the Labor Board by enabling them to present the exact facts as to the Associated Press' relationship to interstate commerce. Beyond that, our position is that we are standing upon the constitution, what we deem to be our constitutional rights, and it has not been our purpose to enter into the proceeding any further. We have wished to avoid raising any question of refusing to respond to a subpœna. We are, therefore, inclined to let the range go as far as possible, but on the question of domination by a small group, we are not disposed to offer a witness.

Mr. Ernst: May I except. It seems to be very proper examination, because Mr. Stratton has consistently pointed out that this is a co-operative. Now, there are various kinds of co-operatives. It seems to me, to let this record stand, would lead to an improper inference that each member of the Associated Press has an equal voice, which, I understand, is not the fact.

Trial Examiner Clark: Well, I think I should have to say, which is all I am called upon to do at the present time, that the evidence does seem relevant on the issue in the light of the testimony already given.

Mr. Bissel: Mr. Examiner, may I ask whether you mean on the question of control?

Trial Examiner Clark: Yes.

Mr. Bissel: I regret very much, Mr. Examiner, I shall [fol. 247] instruct the witness to decline to answer. We will ascertain the amount of bonds outstanding.

Mr. Moscovitz: You will ascertain the number of bonds outstanding and also bring in the annual report?

Mr. Bissel: The financial statements.

By Mr. Ernst:

Q. Mr. Stratton, if the Associated Press is run economically and efficiently, or if it is run in spendthrift, foolish fashion, reflects itself in the financial books of the members, doesn't it?

A. Ordinarily you would assume that. I can't say that that would be a specific fact.

Q. Let's take the particular issue that arose with the employees on a five day—six day week. The difference between a five and a six day week may cost some dollars to the Associated Press. If you go back to a six day week, you will presumably save some money. Otherwise, you would not do it. Now, if you saved some money, isn't it an inevitable inference that the assessment to the members would be reduced?

A. I am not clear in my mind that this is a question——

Mr. Ernst: May I make a point, Mr. Examiner, that worries me for the purpose of the record. As I understand it, the appearance here has been special, and I want to make it very clear so that the record should not be confused and have a special appearance made a general appearance. The Witness, it seems to me, ought to say whether he will [fol. 248] answer or not, and the Examiner rule on it.

Trial Examiner Clark: I think that is correct. I understood and it is perfectly well understood that the appearance is special, and at the present time the issue is interstate commerce and the questions are directed to that end. I understood on this particular question that the witness had declined to answer.

Mr. Ernst: That is the statement he made.

The Witness: I asked whether it is a question I should answer.

Mr. Ernst: I think we ought to ask the Examiner whether it is relevant and pertinent, and whether you should answer.

Mr. Bissel: Well, if I may add, Mr. Examiner, in making a statement, that if the questions are going to lead toward labor relations, we are going to ask the witness to withdraw, as counsel for the witness. We have produced him here for the purposes, as I stated before, in co-operating

with the Labor Board in bringing out the salient facts relating to interstate commerce. It seems to us that that purpose has been pretty well accomplished, and the drift of the questions now is in an entirely different direction, and I do not wish to withdraw the witness entirely, but if the questions are going along that line, we shall do so.

[fol. 249] Mr. Ernst: May I say, Your Honor, the reason I ask these questions is that the record now, according to Mr. Stratton's testimony is full of references to the question of assessments, and I assumed that that was relevant to the question of the set up in interstate commerce, and all I am trying to do is to clarify the present record. He talked of assessments. He told how they were made. I just want to get in the point that the amount of the assessments depends on the cost of operations of the Associated Press. It seems to me so simple and obvious.

Trial Examiner Clark: Well, I must say that this particular point does seem to be a little obvious and it is a little difficult to separate the two issues right along. I don't think we ought to be unfair to the witness. The respondent has taken a certain position as to — far it will participate in the hearing, and I think he is entitled to do it, and I shall have to try to separate the issues where I can, and so far as this is concerned, I cannot really see how it applies to interstate commerce. It seems to me that, furthermore, it is a little obvious.

Mr. Ernst: I except to the ruling.

By Mr. Ernst:

Q. And may I ask, Mr. Stratton, whether the Associated Press will supply us with a witness who can address himself to that question which I have asked. Not whether you can, but whether the Associated Press will supply a witness, without subpœna?

A. That is something I cannot tell you.

[fol. 250] Q. In whose power is that decision? Mr. Ken Cooper's? Who has the power to determine whether this afternoon we can get out of the mouths of an Associated Press official or employee certain data that the editorial employees think relevant to this issue? Who has the power?

A. Well, that I do not consider a question for me to answer, Mr. Ernst, for the reason that my appearance here is for a specific purpose and that is the only purpose for

which I knew that the Associated Press has made a representative ready for. Now, whether there is a representative to testify as to other aspects of this matter, is something we have not considered, and I would not know how it could be approached.

Q. Do I understand that you don't know who could give the testimony or even if you did know, you would not think it proper for you to answer?

A. It is neither. It is something I don't know anything about. I couldn't give you an answer.

Q. When you said yesterday that the assessment was nine and a half million dollars, approximately, does that nine and a half million include all the income of the Associated Press, or just assessments? You used the word "assessments" yesterday and I just wanted to have the record correct.

A. That is the total income to the Associated Press.

Q. And the bulk of that is from the assessment on members?

A. That's right.

Q. And some of it comes from salvage in sales, like Keystone, and Toronto items?

A. I couldn't say with respect to the latter. My remembrance of the balance sheets, of the financial statement, [fol. 251] shows under income the amount from assessments from the members, and interest only.

Q. Now, the Associated Press in the transmission of news in interstate commerce is damaged if the news is stolen by other agencies or by radios?

A. I am sorry, I didn't get the first part of the question.

Q. The Associated Press, engaged in the spread of news, the Associated Press is damaged, is it not, if its news is stolen by other agencies or radios?

A. The Associated Press is damaged?

Q. Yes.

A. Just in the sense that you asked the question, I cannot answer it, Mr. Ernst.

Q. Answer it in any sense you think it makes sense.

A. You mean if it is damaging to the Associated Press, it is damaging to the extent that it is appropriating a property of the Associated Press.

Q. I am not asking you "if". I ask you, do you think as a human being, do you think as an employee, do you think the Associated Press is hurt if your news is stolen

by somebody that has no right to it and is not a member?

A. Just in the extent that I have just said.

Q. I don't care about "extent". Is it damaged?

A. It is damaged to the extent I have described.

Q. But there is some damage?

A. To the extent I have described.

Q. Now, the Associated Press in the control of this flow of news, has a domination over its members, hasn't it? You can fine them, you can punish them, right?

Mr. Bissel: Do not answer the question, Mr. Stratton.

[fol. 252] Trial Examiner Clark: Well, it seems to me that this is——

Mr. Bissel: Our feeling, Mr. Examiner, is that we brought Mr. Stratton up here as a courtesy to the Labor Board, and unless the Labor Board has any further questions to ask, I shall instruct him to withdraw.

Mr. Moscovitz: That particular point, I think, is covered in the charter and by-laws.

Mr. Ernst: May I have what I was going to? I was going to this question of the control of the flow of news in interstate commerce, and it ties up, if Your Honor please, in this respect, which Mr. Stratton would know, that when there is a strike on a member paper, as in the case of the Newark strike recently, there is a cessation of the flow of news from a member to the Associated Press, because, as I take it, it is entirely material to this flow of interstate commerce question, and part of it, to get in evidence what happens in a case of interruption to the flow, that is interstate commerce.

Trial Examiner Clark: Well, on this I should think on the point of relevancy, I should have to say it was relevant. I do think it is rather covered by paper material we have here, but I think it is relevant. Now, what should happen next after that——

Mr. Bissel: I am sure you appreciate that we do not want to show any feeling of discourtesy. Our position is a perfectly clear one. We wish to help the Labor Board [fol. 253] to show the set up sofar as interstate commerce is concerned so that a question may be raised, which may go to the courts. Beyond that we do not wish to go. It seems to me the picture is perfectly clear and I think the trend of the question now is in another direction, and I respectfully instruct the witness to withdraw.

Mr. Ernst: I would like to ask some more questions on interstate commerce.

By Mr. Ernst:

Q. Do I take it you are co-operating with the Labor Board, but you are not willing to extend the same co-operation to the Newspaper Guild and your editorial workers?

Mr. Bissel: Mr. Stratton, would you kindly withdraw?

(Witness withdraws.)

Mr. Ernst: May I ask that you remain in court a minute for Mr. Moscovitz to ask you some questions.

Trial Examiner Clark: We will recess for five minutes.

Recess.

After the recess.

COLLOQUY

Chairman Clark: Shall we resume?

Mr. Ernst: I would just like to make sure that the record indicates what I understand just happened, and that on at least one question my recollection is more. Where the [fol. 254] Master held the questions were relevant, the Associated Press withdrew the witness and would not permit him to testify, indicating that the witness had been offered to cooperate with the Labor Board and indicating also that the witness would not be allowed to testify to cooperate with the Editorial Workers of the American Newspaper Guild. Is that a correct understanding of the record, Your Honor?

Trial Examiner Clark: I don't want to comment on the part you speak of as indicating—that will speak for itself.

Mr. Ernst: I was a little worried by the fact that the stenographer may not have taken down the last colloquy, and I note that she left and she may have thought the colloquy was off the record, and if necessary, I think it is quite important to put it into the record, and I would like Mr. Stratton to take the stand to be sure that my understanding is correct.

Trial Examiner Ernst: I don't think it is necessary. I ruled the last question was relevant and the Counsel instructed the witness to withdraw. Now, were there any further proceedings to take place or not? As I understand

it is up to the Board. I am afraid it is not up to your client or yourself. There is nothing further before me at the moment, and that is the way it stands.

Mr. Ernst: Now may I ask on the record whether Coun-
[fol. 255] sel for the Associated Press, appearing especially, will supply any witness, any witness whatsoever, to the American Newspaper Guild in connection with any facts of the matter now pending before the Master?

Mr. Bissell: Mr. Examiner, I can only repeat our position. We have endeavored to cooperate with the Labor Board in getting before the Examiner a correct picture of the setup of the Associated Press with respect to interstate commerce. We feel that we have done that, that the witness has served his purpose, and for that reason we have withdrawn the witness.

Mr. Ernst: That is all.

Mr. Moscovitz: Mr. Examiner, the Counsel for the Respondent will produce the figures that we have asked for and the number of employees and also the approximate payroll in writing and it will then be submitted by me to the stenographer and made part of the record as an exhibit.

Trial Examiner Clark: Very well. Have you anything further?

Mr. Moscovitz: I have nothing further at this time on the interstate commerce aspect of this case.

Trial Examiner Clark: Then I will deny the two motions on the remaining ground which I reserved in connection with the interstate commerce feature.

Mr. Bissel: We take exception.

Trial Examiner Clark: Yes.

[fol. 256] Mr. Moscovitz: Before I proceed with the next witness, it occurs to me that there are one or two things which are still left open. The first is that Mr. Stratton was going to bring a sample bill.

Mr. Stratton: Isn't that the printed thing?

Mr. Bissel: I don't know what he gave you but I thought that satisfied you.

Mr. Moscovitz: That will be all right; then there is the copy of the American Telephone and Telegraph contract.

Mr. Stratton: I am not producing it.

Mr. Moscovitz: I asked if he would and he didn't answer me.

Mr. Stratton: No.

MR. MORRIS WATSON, called as a witness by the Board, having been duly sworn, testified as follows:

Direct examination.

By Mr. Moscovitz:

Q. What is your full name?
A. Morris Watson.
Q. Where do you live?
A. 51 East 59th Street, New York City.

Mr. Moscovitz: This, Mr. Examiner, is Case 2-C that we are proceeding with rather than the representation case.

By Mr. Moscovitz:

Q. You are the person involved in the discharge complaint?
A. That is right.
[fol. 257] Q. And how long were you employed by the Associated Press?
A. Approximately seven years.
Q. Seven years?
A. Yes.
Q. When did you start?
A. In December, 1928.
Q. And when was the last day of your employment?
A. October 18, 1935.
Q. And where did you start your newspaper career?
A. In Omaha, Nebraska.
Q. And when was that?
A. 1923.
Q. 1923. Have you been continually in newspaper work from that day until 1935?
A. Yes.
Q. And what positions did you hold before going with the Associated Press?
A. I was successively police reporter, general assignment reporter, motion picture critic, and state editor of the Omaha World Herald. Then, about 1927, I went to the Denver Post as a reporter—the Denver Morning Post that is—as a reporter, later as picture editor; then to the Chicago Herald Examiner as a copy reader.
Q. And that was all before your association with the Associated Press?

A. Yes.

Q. And those are the only papers that you worked for up until the time you went with the Associated Press; is that right?

A. Yes.

Q. And how did you happen to join the Associated Press?

A. I was recommended to Mr. Charles E. Honce by Paul Nicholson, the sports writer in Chicago who worked for the Associated Press. Mr. Honce was the central division news editor in Chicago at that time.

Q. For the Associated Press?

A. That is right.

Q. And what salary did you receive at the start?

A. I received if I recollect $65 a week.

[fol. 258] Q. Will you trace the course of your employment with the Associated Press up until the time you came to New York?

A. Shortly after I joined the Associated Press in Chicago I was sent to Springfield, Illinois, to the Bureau there. I stayed two or three months there and then returned to Chicago. I was in Chicago approximately two years and then transferred to New York.

Q. And what type of work were you doing during the course of your employment before coming to New York, that is, while with the Associated Press?

A. Rewrite and reportatorial work.

Q. Is that type of work different from regular newspaper work?

A. Slightly different. There are special problems that Press Association men have.

Q. In what respect do Associated Press duties differ from regular newspaper duties?

A. Well, they don't differ greatly Mr. Moscovitz. The Associated Press man of course has to get his story out at any time he gets it, whereas a newspaper man is working against a given dead line always. I would say that would be the chief difference—a matter of speed. He has to work faster.

Q. But your actual duties in the handling of your work may be the same as the handling of a report, for instance, for a regular newspaper?

A. More or less.

Q. Do you recall whether or not you received any important assignments while working in Chicago?

A. May I refresh my memory from a statement I wrote immediately after my discharge?

Q. Is that a statement of your career with the Associated Press?

A. It is, yes.

[fol. 259] Q. And made immediately after your discharge?

A. That is right.

Q. Yes.

A. I covered the Senatorial campaign of J. Hamilton Lewis, the endurance flight——

Q. When was that?

A. I don't remember.

Q. You don't remember?

A. I don't remember exactly—it was during my time there. The endurance flight of the Hunter brothers, the National Air Show, and toward the end of my employment at Chicago I was sent to Youngstown, Ohio, to cover the injunction fight between the stockholders of the Bethlehem Steel and the Bethlehem Steel Company in the matter of the merger with the Youngstown Sheet and Tube Company.

Q. That was in Youngstown, Ohio?

A. That is right.

Q. Were those consignments considered of great importance at that time?

A. It was, yes.

Q. Did you receive any compliments from your superiors during this period?

A. While I was in Youngstown, Ohio, I received a letter from Mr. Honce who at that time had become division news editor in New York—the setup was a little different then in New York City—who said that he could tell by the general excellence of the stories I was writing. That is the only praise I remember.

Q. Do you remember being criticized?

A. I had not.

Q. Were you then transferred to New York?

A. After returning to Chicago from the Youngstown, Ohio, assignment, I was transferred to New York at Mr. Honce's request.

Q. When was that?

A. 1930—late 1930—about November or December 1930.

[fol. 260] Q. When you say at Mr. Honce's request you mean he wanted you here in New York with him?

A. That is right.

Q. Do you recall how that request was made and to whom it was made?

A. Yes. Mr. Brophy, the Central Division News Editor who succeeded Mr. Honce there, called me in one day——

Q. Succeeded Mr. Honce in Chicago?

A. Yes. He called me in and said he had a letter from Mr. Honce requesting my transfer to New York.

Q. And was a New York transfer considered complimentary?

A. Generally so, yes.

Q. Was there any evidence at the time as to whether or not Mr. Honce considered you to be a newspaper man of unusual ability?

A. I had been told by some people that he did. On the occasion of my transfer I was told by Mr. Edward Stanley who is now an executive of the Associated Press.

Q. What was Mr. Stanley's position at that time?

A. I think he was in the feature service. As a matter of fact, he wrote me a letter from New York telling me that Mr. Honce had said he was transferring me to New York and that I was a man of unusual ability and would be of great aid on the city desk here.

Q. Mr. Honce himself told you that himself at the time of transfer aside from the fact he made a request for it?

A. I can't say if he did directly.

Q. Were you continually employed in the New York office from the date of your arrival to your discharge?

A. Yes.

Q. What type of work did you handle in the New York office, that is functioning?

A. Reportorial assignments and rewrite work.

[fol. 261] Q. And will you list some of the assignments which you handled while at the New York office?

A. May I refresh my memory from the statement again?

Q. Yes.

A. With a paper, stories which seem important at the time don't seem important later.

Q. All right.

—. I covered the first and second trials of United States Senator James A. Davis on Federal lottery charges in this building. The death of United States Senator Morrow. The funeral of President Calvin Coolidge. I was sent to Massachusetts for that. The arrival in America of the then Prime Minister Ramsay MacDonald of England. The return of William C. Bullit from Europe after there had been an uproar in this country about his possible negotiations with foreign countries on behalf of President-Elect Franklin D. Roosevelt. The arrival of Maxim Litvinoff on the occasion which preceded the United States recognition of Russia. The first trial of William Graham and James C. McKay on mail fraud charges. The return of legal liquor to New York City. The non-technical angles of the Lenz-Culbertson bridge match. The gubanatorial campaign of William Donovan in 1932. The return of Samual Insull after extradition from Turkey. The federal trial of Conrad H. Mann, Frank E. Herring, and Bernard C. McGuire, and Raymond Walsh on lottery charges. And numerous interviews, shipboard and elsewhere.

Q. Are these assignments considered by newspaper men as being topnotch assignments?

A. They were at the time.

Q. Are they assignments that are only given to key or ace reporters?

[fol. 262] A. Generally speaking yes.

Q. Did you receive compliments or criticism of any of this work?

A. Yes, on a good deal of it.

Q. A good deal of compliments or a good deal of criticism?

A. A good deal of compliment.

Q. All right. Will you explain that?

A. Well, on many occasions I have shown letters from managing editors and papers—telegrams came from telegraph editors praising various stories.

Q. Do you remember specific-ly the name or names of any person?

A. I remember a letter from the acting managing editor of the Omaha World Herald on which I was at one time employed. I remember a telegram was sent by the telegraph editor from Columbus, Ohio—I forget the paper—on the occasion of the story about the Lenz-Culbertson

bridge match. I remember telegrams and letters sent by the publishers of the Reno Gazette at Reno, Nevada.

Q. Are these telegrams and letters sent to the Associated Press?

A. That is right—praising the coverage of the Graham and McKay trial, which was of special interest to them.

Q. Who was City Editor Seemore?

A. Gideon Seemore. He was the first city editor I had from New York.

Q. Did you receive praise from him at that time regarding these stories?

A. Yes, I did. I didn't mention the story on which I specifically recall praise from Mr. Seemore, and that was the coverage of the story of Ben Lindsay calling Bishop Manning a liar in church.

Q. And did you at this time note any change in your income?

[fol. 263] A. Yes. Shortly after I came to New York I wrote a story indicating the return of prosperity in the following year—which failed to return, however. From intelligence gathered by the Bureaus of the Associated Press the story was widely praised. It was on page one of virtually every Associated Press newspaper in the country that afternoon and the next morning. The lead of the story happened to mentione*d* the construction symphony. Mr. Honce came by my desk one day and he said the General Manager just asked him who wrote the construction symphony. Then he came back an hour later and said the General Manager had ordered a raise of $30 a month for me.

Q. Can you fix that as to time appproximately?

A. I may have it in the statement here. It was late in December, 1930.

Q. 1930?

A. Yes.

Q. Was that after you had handled the stories that you have listed?

A. Before.

Q. Before, I see. Now, in addition to the stories, the assignments which you have listed, did you handle any more rewrite work during the time that you were in New York? Yes or no.

A. Yes.

Q. Will you tell me what rewrite work is? What is rewrite?

A. Well, generally it is taking a story over the telephone and putting it in printable form.

Q. Will you explain the mechanics of it? Take, for example, a story which may break in—is it possible that a story may break in New Jersey which would be handled by telephone?

A. Yes.

Q. And handled by you as a rewrite man here?

[fol. 264] A. That is right. Generally a New Jersey story in the Associated Press would be handled by the Bureau in New Jersey, but during all the stories on the Lindbergh kidnapping there were a number of men in New Jersey from the New York office who were constantly telephoning back to the New York office.

Q. How would that be handled?

A. They would telephone to the city editor and say they had a certain story and the city editor would assign someone to take the story over the telephone. If I received the assignment I would take the facts as given to me by the reporter on the spot and write the story on a book—it was called a book. It is a number of flimsy sheets so that in one typing you make about 27 copies. I would turn that book over to the city editor and he would release it for distribution to the wires.

Q. Is that a slow or rapid process of operation?

A. A very rapid process.

Q. Do you have any idea of the average time it takes from the receipt of a story by telephone and the rewrite of it and dispatch?

A. Well, it would depend upon the length of the story. I should say that 250 words would go on one book, the book being about eight inches from top to bottom, and that for each book of story the time required would be five to ten minutes depending upon the speed of the person writing it, depending upon the speed of the person giving it over the phone.

Q. But it is a generally rapid process?

A. Generally a very rapid process.

Q. And rapid in the sense of incoming, rewriting, and dispatching?

A. That is right.

[fol. 265] Q. It is in effect a continuing process?

A. Well, I don't know just what you mean by continuing process.

Q. I mean the news comes in by telephone, it is written down in the book, and then handed to the editor?

A. That is right.

Q. And he then dispatches it?

A. As a matter of fact it is handed to the editor book by book generally. If it is an important story and the wires are waiting for it, so that it goes out in takes. That is, you may take part of the story over the phone and write that part of it and go back to the telephone and get more.

Q. I see. Then will it go out in the manner in which Mr. Stratton described by these wires?

A. It would be distributed to the wire editors, and if it is very important they will get it on the wire as quickly as he can.

Q. Punch it out—is that right?

A. Yes.

Q. Will you list some of the rewrite which you have done?

A. I don't believe I could by specific story because I wouldn't remember. A great deal of the Lindbergh kidnapping, numerous trials and other things on which the Associated Press sent reporters and telephoned back to the office, and then considerable routine rewrite from city news copy and from the papers.

Q. Was your work divided between the office and the field?

A. Yes.

Q. And did you spend the greatest amount of your time inside or outside?

A. The greater amount inside.

Q. And will you tell us—did your field work carry you into other states?

A. Frequently.

[fol. 266] Q. What states?

A. New Jersey mostly. Once to Massachusetts, once to Ohio.

Q. And can you list some of the stories that you have handled in your travels from the New York office to points outside of the state of New York?

A. I worked on the Morro Castle burning in New Jersey; on the death of Senator Morrow——

Q. That was in New Jersey?

A. New Jersey—Englewood, New Jersey. I went to Hopewell and Trenton several times during the Lindberg case; to Youngstown, Ohio, as I previously stated; Northampton, Massachusetts for the Coolidge funeral. I made frequent trips to New Jersey on stories I can't recall now.

Q. Aside from this reporting work and rewrite work did you, while working here, ever do filing work or machine work or wire work?

A. I filed a wire for several months. I can't remember the exact dates now. I could find it in this statement.

Q. Give me approximately the year.

A. 1934 and 1935.

Q. Yes. And how did you fit into that operation?

A. I filed the south wire.

Q. How did it work and how did you work with it?

A. Well, I sat at a desk, copy was delivered to the desk——

Q. Delivered to the desk by whom?

A. By messengers, copy boys.

Q. And copy which had come in in what manner?

A. From other wires, from the city desk, from the cable desk, and the sports desk.

Q. I see, handed to you by these messengers?

A. Right.

[fol. 267] Q. What did you do with it?

A. I would edit it and according to interest of the circuit and then hand it to an operator.

Q. Yes. And is that a rapid operation?

A. A very rapid operation.

Q. Do you have any idea of the time limit involved or the average time involved in a story of that sort in a dispatch by wire?

A. You mean the complete operation from the time the story come in until it goes out on another wire?

Q. Yes.

A. Well, that would depend upon the importance of the story. A bulletin would come off another wire and if it were a bulletin that was of interest that is still bulletin matter for the circuit you were filing it would go immediately. It would go ahead of other copy waiting, and I

should say not more than a minute or two would be involved in the relay.

Q. Now, is the scoring of important beats in the ontake of good play of story something highly desired by the Associated Press and newspapers generally?

A. They have always said so.

Q. What is meant by scoring an important beat?

A. Well, to obtain an important piece of news and get it to the newspaper before anyone else does.

Q. And what is meant by scoring by obtaining good play?

A. Generally in the Associated Press work to get your story in the papers instead of the opposition.

Q. Did you during your experience with the Associated Press in New York manage to score any important beats and obtain good play?

A. Yes.

Q. Will you list and explain if possible?

[fol. 268] A. Well, on the Insull arrival in the United States we were fifteen minutes ahead of the nearest opposition.

Q. You handled that?

A. Yes.

Q. Did it obtain good play?

A. It did. With that length of time you are almost sure of getting a story in the papers ahead of the opposition. The first story that comes in is likely to be used if it is any good at all.

Q. Do you think of any other at this time?

A. I can't recall offhand. I know that several times I have been from two to fifteen minutes ahead on important quick verdicts, and others for which the Associated Press received praise from telegraph editors.

Q. Did you ever interview J. P. Morgan?

A. Yes.

Q. Would you tell me whether or not Mr. Morgan would only see one reporter at the time?

A. That is right.

Q. Who was that reporter?

A. That was me.

Q. Was it during that time that a great number of reporters were desirous of seeing J. P. Morgan?

A. Yes. The ship news reporters and several others —they were augmented by a number of additional reporters that had been sent down.

Q. Up until the time you became associated with the Newspaper Guild of New York, had you ever been criticized by the Associated Press for the manner in which you conducted yourself or handled your work?

A. I never had been—not to my knowledge—except—no, I remember criticism after my association with the Guild, not before.

[fol. 269] Q. What is the criticism that you received that you are referring to in your mind now?

A. Well, I recall that I was reprimanded for permitting the prefix "Mrs."——

Q. I don't want to go into that now, but can you tell me whether or not any question arose as to the coverage of the Lenz-Culbertson match—the writing of the book?

A. Yes.

Q. Was that before or after you became a member of the Newspaper Guild?

A. It was after.

Q. Will you explain that?

A. Let me correct that. I am not certain—it was just around the time of the organization of the Guild. I am not certain that that occurred before or afterwards.

Q. Was it just about that time, whether it was before or after?

A. I am inclined to think now it was slightly before.

Q. Will your notes refresh your recollection on that point?

A. It might. I think it was before.

Q. It was before you became associated with the Newspaper Guild?

A. Yes.

Q. And what was that question which arose regarding the book?

A. The Bridge World Publishers asked me to write a book about the match. I did. I made no secret of it. I was called into the office once evening by Mr. Honce and told that if the book appeared it would result in my separation from the Association, and he said that he would consider that very unfortunate for both of us.

Q. About when was that? In what year?

A. 1933, I think.

Q. 1933. Go right on with the story. You were saying that you were called in by Mr. Honce.

[fol. 270] A. Yes. I agreed to ask the publishers to withdraw the book they had already printed.

Q. Did I understand you to say before you were called in by Mr. Honce and he said——

A. He said if the book was published it would result in my separation from the Associated Press and that he would consider that very unfortunate for both of us.

Q. Yes. Then what.

A. I asked the publishers to withdraw the book. They declined to do it because it had already been printed, but they agreed to reprint the title page and use another name. When I told Mr. Honce about that he said that would be satisfactory providing I wrote a letter repudiating the royalties and telling him I would not take any royalties.

Q. Now, was there some policy at the Associated Press regarding this matter?

A. I was told at the time that outside writing was not permitted. I had not known it except by rumor before then.

Q. Is that the only piece of outside writing that you had done?

A. That is the only one.

Q. Now, when did you join the Guild?

A. At its inception.

Q. And what is the date?

A. I think the Guild was organized in 1933. Yes, that is right—late in 1933. I don't remember the exact date.

Q. Well, were you one of the first members to join?

A. That is right.

Q. Do you have any way of getting for me the exact date of when you joined the Guild?

A. It depends upon the exact date of the organization of the Guild, because I was active in its—during its provisional stage.

[fol. 271] Q. Was it November, 1933?

A. That is right.

Q. Did you hold any official position with the Guild?

A. Yes. The first position I held with the Guild was Chairman of the Associated Press unit. Then I was elected

Treasurer of the New York Guild. Later, Secretary of the New York Guild. And at the same time, the Vice President of the American Newspaper Guild.

Q. What official position did you hold or were you holding at the time of your discharge from the Associated Press?

A. I was Vice President for Wiring Services of the American Newspaper Guild.

Q. Will you simply, without going into any details which will be covered in the representation part of these proceedings, explain to me the setup that exists within the Guild? By that I mean this: Is there a local unit, and then a unit above it? What is the local unit of the Guild?

A. The local unit is known as the Associated Press Unit of the Newspaper Guild of New York.

Q. Yes. Now, is that the unit to which the Associated Press employees belong?

A. That is right.

Q. All right. And then what affiliation does that have?

A. That is a part of the Newspaper Guild of New York.

Q. I see. And is the Newspaper Guild a part of anything?

A. That is a part of the American Newspaper Guild.

Q. And is the American Newspaper Guild national in its organization?

A. Yes. It issues charters to the local Guilds.

Q. I see.

A. In effect it is an association of the Local Guilds.

[fol. 272] Q. Were you an active Guild member?

A. Yes.

Q. You were one of the organizers of the unit here?

A. Yes.

Q. And continued active throughout your work with the Associated Press?

A. Yes.

Q. Do you know whether or not the Associated Press was advised of your Guild activities?

A. From the very beginning it must have been advised of my Guild activities—in December, or earlier than that—in November—before the actual organization of the Guild, or before the formal organization of the Guild. I was a member of a Provisional Committee which went to Washington to appear before the N. R. A. hearing on the newspaper code, and at that time I urged the N. R. A. Adminis-

tration to impose a code upon the Press Associations as well as newspapers.

Q. And was your appearance there and your statements you made there reported?

A. By the Associated Press, yes. Parenthetically they said that while I was an employee of the Associated Press in the New York office, I did not on this occasion represent the Associated Press, which of course was correct that I didn't represent it—nor any of its employees, which was incorrect.

Q. In other words, you admit you didn't represent the Associated Press, but you deny you didn't represent the employees. Is that right?

A. That was a gross inaccuracy.

Q. Now, that story, as you say, was reported by the Associated Press itself?

A. Yes.

Q. Was there any other indication that the Associated Press was advised of your activity?

[fol. 273] A. Yes. When I was elected Treasurer of the New York Guild I applied for a bond and the Associated Press was asked for a reference.

Q. By the Bonding Company?

A. By the Bonding Company.

Q. And after the Associated Press was asked for a reference—how do you know this was brought to the attention of the Associated Press?

A. Because the letter was turned over to Mr. Honce who called me to his desk, and he flung it at me in rather an angry manner and said, "What does this mean?" I read the letter and I said, "It looks like a request for a reference" and it was up to him as to whether he wanted to give it or not.

Q. What would you say his attitude was on this occasion?

A. He was piqued.

Q. Can you fix that as to date approximately?

A. November, 1933. Immediately after the organization of the Guild.

Q. Now, did you ever attend any meetings in Washington as a representative of the American Newspaper Guild?

A. Yes. I was a delegate to the first convention which organized the American Newspaper Guild, on December 15, 1933.

Q. And what did you do there?

A. At that time, in cooperation with the Commercial Telegraphers Union of North America, I submitted to General Johnson a proposed code for the Press Associations.

Q. And did any other union join with you in this?

A. The Commercial Telegraphers.

Q. Do you know whether or not the Associated Press was advised of this activity?

A. They mentioned it in news reports.

Q. Upon your return were you confronted by any of- [fol. 274] ficer of the Associated Press or any person holding an executive position regarding this organization?

A. Yes, by Mr. Elliott who was then Assistant General Manager.

Q. What did he say to you, if anything?

A. He seemed to be very mad because I had cooperated with Arthur Markel, Vice President, or Deputy of the Commercial Telegraphers Union.

Q. Did he indicate to you whether that perhaps was a foolish thing for you to appear in Washington?

A. He did. He indicated that unionization was very foolish—or said so, and——

Q. At that time?

A. Yes.

Q. How did that conversation come up and what was said?

A. I don't remember the exact words of the conversation, Mr. Moscovitz. He at any rate either at that time or slightly later than that—he indicated that I would have a very brilliant future with the Associated Press if I refrained from Guild activities.

Q. Did he actually use the words "brilliant future"?

A. I am quite sure he did.

Q. And can you fix that now as to time? Would you say that was after your return from the meeting in Washington that you have just been referring to?

A. It was after the return from the meeting in Washington but it could not have been before.

Q. And was it part of the conversation regarding your appearance in Washington?

A. My memory is a bit hazy about that as to whether some time later I wrote or later. The National Press As-

sociation Committee wrote an open letter to General Johnson which seemed to upset Mr. Elliott a great deal, and it might have been on that occasion.

[fol. 275] Q. Did you subsequent to this time, as Chairman of the Press Association Committee of the American Newspaper Guild, take any other matter up with the N. R. A.?

A. Yes. I was constantly in communication with the N. R. A., with General Johnson, attempting to get a code for Press Associations.

Q. In that endeavor did you submit any letter or any open letter?

A. I wrote an open letter.

Q. To whom?

A. General Johnson.

Q. When was that. Do you recall?

A. March 27, 1934.

Q. And what did the letter state?

A. Well, it asked why Press Associations had been allowed to ignore the N. R. A. I could read the letter.

Q. Do you have a copy of it?

A. Yes, I have it copied in the statement..

Q. Will you read it?

A. (Reading):

"If the New Deal fails and you cite Bud and Wier, don't overlook the Press Associations. We hope it doesn't fail, but if it does, and you apportion blame, make this distinction. Bud and Wier were openly hostile. The Press Associations stood on a soft pedal. Date the loss of public confidence, if it comes, from that day on which the newspaper men of the country lost faith in you. We have seen other movements peter out and it began to peter out as soon as reporters discovered they were meaningless.

"Now, we ask, and we would like to have an honest answer, why have Press Associations been allowed to ignore N. R. A. codification? If you are going to answer that [fol. 276] the key men of the industry are in Europe, or that the Press Associations can't act until the Directors of the Association meet late in April, then we ask in turn, where were the key men last December when we submitted a code proposal and you were reported to have asked the Associations to submit a code. And where have the Directors of the Associated Press been all this year that

N. R. A. has been getting ready to crack down on recalcitrant industries.

"And speaking of cracking down, it couldn't be possible, could it, that cracking down on your part is being tempered in direct proportion to the amount of power that an industry wields?

"General Johnson told us in Washington that the President might be persuaded to impose a code upon an industry which fails to submit one if he thought there were labor abuses. We are prepared to show there are labor abuses. So we have a request. Please set a hearing for some time within the next two weeks, in Washington or New York, and ask Press Associations to show cause why they should not immediately submit a code or have one imposed upon them, and why they should not at once institute the 5-day week pending code. We say they can't show that cause.

"Very truly yours, Press Association Committee
American Newspaper Guild."

[fol. 277] Q. Was that letter signed by you?

A. The letter was signed just that way—Press Association Committee, American Newspaper Guild. The publicity that was sent out on it used my name as the Chairman of the Committee, and it was so printed in Editor and Publisher that way.

Q. Do you know whether or not the Associated Press was advised of this matter?

A. Yes. Let me read my statement that answers that question. (Reading) "The fifth paragraph of the letter which mentioned the Associated Press greatly disturbed the executives of the Associated Press. Mr. Honce argued that since I had signed the letter as Chairman of the Committee the mentioning of the Associated Press in this connection amounted to singling out that organization for attack."

Q. Did you make any explanation of the letter to Mr. Honce?

A. No, I thought the letter stood for itself.

Q. Did you take steps to explain that the Associated Press was not singled out for attack?

A. Yes. I denied that it was singled out for attack. After conversations with Mr. Honce and Mr. Elliott I wrote a letter to Editor and Publisher just stating that fact that there was no intention to single out the Associated Press.

Q. And did Mr. Honce speak to you after this about your Guild activities?

A. He told me he was very chagrined by my continued Guild activity.

Q. And was that after this particular incident we are discussing?

A. Yes.

Q. Did you after this at any time take steps to negotiate [fol. 278] with the Associated Press for the purpose of collective bargaining?

A. I will refer to my statement. Yes. On July 2, 1934.

Q. Is that the date?

A. That is right.

Q. All right. And how was this done?

A. The Associated Press Unit of the Guild adopted a resolution addressed to the American Newspaper Guild asking the American Newspaper Guild to undertake collectiving bargaining.

Q. And was a letter sent to any officer of the Associated Press requesting an appointment for this purpose?

A. Yes. After the American Newspaper Guild had been informed by the unit, that is formally informed of the action, a letter was sent to Mr. Kent Cooper by Mr. Jonathan Edy and myself. Mr. Jonathan Edy is the Executive Secretary.

Q. And was the letter signed by you?

A. I was a co-signer of the letter, yes.

Q. A co-signer of the letter. Did you also send a similar letter to the President of the Associated Press?

A. Mr. Frank B. Noyes, yes.

Q. And do you recall what date this was?

A. August 1st.

Q. 1935?

A. 1934.

Q. 1934. And did you ask for an appointment in that letter?

A. We did.

Q. Was any committee appointed by the Guild for bargaining purposes?

A. Not at that time. But—let me correct that. There was a standing committee for wire services for bargaining service in the American Guild, of which I was Chairman. However, there was a constitutional limitation there that

would have prevented me from actually bargaining with my own employer on behalf of other employees.

[fol. 279] Q. Then the bargaining would have had to be done through——

A. By other members of the committee.

Q. Other members of the committee?

A. That is right.

Q. The committee being from the American Newspaper Guild itself which represents the Local Union; is that it?

A. May I explain the setup as regards to our service men in the American Newspaper Guild?

Q. I -ish you would.

A. Bargaining generally is by Local Guilds. That is, the constitution delegates the bargaining power to Local Executive Committees, with the exception of men who are employed by Press Associations of national character. The bargaining for them lies with the Executive Committee of the Executive Board of the American Newspaper Guild.

Q. What is the reason why an employee is not permitted on the bargaining committee, if negotiations are going to be gone into with his employer?

A. Because it is the theory of the Guild that an employer has too much of an advantage over his own employee. He can make him sell out his fellow workers by offering to promote him, or frown at him, or anything else.

Q. You mean fear of reprisals or something like that?

A. That is right.

Q. Did you receive any letter in reply from the Associated Press? A letter in reply to the letter you sent?

A. Yes, we did.

Q. After this request for collective bargaining was made, did you know whether or not the executives of the Associ-

[fol. 280] ated Press interviewed workers in the respective departments asking them about their Guild connections?

A. I was told by workers that they were called over one by one.

Q. And do you know when this was?

A. It was about the middle of August—August 11th, as a matter of fact.

Q. August 11, 1934?

A. Yes.

Q. Will you explain to me what you mean when you say you were told by workers?

A. Well, that workers would tell me the Mr. Honce just called me over and said do I belong to the Guild, and why, and didn't the Associated Press treat you right and why did you have to join a union.

Q. Had you ever been interviewed by Mr. Honce during this period?

A. No, not at that time.

Q. So that, the information you have on that point comes to you from employees there?

A. Yes.

Q. Do you know the names of the persons, the employees who told you this?

A. I do but I wouldn't want to state them.

Q. Why wouldn't you want to state them?

A. For fear of reprisals.

Q. Can you tell me whether or not you noticed any difference in the number of members who belong to the local unit after this alleged interview?

A. Yes. The membership of the unit fell sharply. There were ten or fifteen resignations and the dues collections fell down.

Q. Well, you do know as a fact that after the date of August 11th when it was reported to you that certain employees were interviewed by Mr. Honce——

A. And other executives.

Q. —and other executives, that membership in the Guild [fol. 281] did decline?

A. It did decline the first time.

Q. And you say that was by withdrawal?

A. In a few cases withdrawal, in other cases just a cessation of the Guild activity.

Q. What did the Guild do about this? Anything?

A. The Guild held a meeting. The unit you mean?

Q. Yes.

A. The unit held a meeting.

Q. That is the local unit?

A. Yes, on August 17, 1934. And on that occasion suspended its request for collective bargaining pending the creation of a committee from the unit to talk to Mr. Cooper. I was a member of that committee elected at that time.

Q. You were a member?

A. Yes.

Q. And did you meet with Mr. Cooper?

A. I did.

Q. When?

A. I believe it was the next day.

Q. The next day. Were you asked to go to it?

A. Well, by the unit. The unit meeting—oh no, there was another meeting on August 21st. It was in between August 17th and 21st that the Committee met Mr. Cooper, but I had been elected to the committee by the unit.

Q. Yes. Were you on the committee when you met Mr. Cooper?

A. Yes.

Q. What took place at that time?

A. Mr. Cooper told us that he could not—well, as a matter of fact he told us that he would quit his job rather than bargain with an outsider.

Q. That was in your presence?

A. Yes.

Q. Was there anything further?

[fol. 282] A. He told the committee there would be no reprisals for Guild activity. He stated that he had received many letters from Associated Press members demanding my discharge. He also told us that every time my "by line" was used in a report it brought protests from Associated Press members because I was a Guild.

Q. Because of your Guild membership activities, is that it?

A. Yes.

Q. When he said he would not deal with an outsider to whom was he referring?

A. To the American Newspaper Guild.

Q. Had Mr. Cooper before this meeting ever mentioned to you the fact that protests were coming in to the Associated Press because of your Guild activities?

A. Yes. A few days before that when I saw him alone he told me that.

Q. Did he state whether or not this would interfere with his giving you any assignments?

A. Yes. He said that he could not give me a foreign assignment so long as I was active in the Guild because people would think that he was running away from me and that I was running away from him. I—well, I drew a conclusion from the conversation that I could at that time get a foreign assignment,——

Q. I wouldn't want you to give me any conclusions, but can you explain what his running away from you and your running away from him meant?

A. Well, not beyond what it seems to state on its face.

Q. And what impression did you get from that statement?

A. The impression I could have a foreign assignment if I quit the Guild activities.

[fol. 283] Q. Had you ever requested a foreign assignment?

A. I have ever since coming with the Associated Press.

Q. So to you it was something of great importance, that is, the matter of getting a foreign assignment?

A. Yes.

Q. And you had brought this to the attention of Mr. Cooper?

A. Yes.

Q. He knew clearly you were interested in getting a foreign assignment?

A. Yes.

Q. Were reporters and wire filers called in for meetings at any time after this?

A. Yes, they were.

Q. Do you know when that was?

A. Late in August.

Q. By whom?

A. The reporters and wire filers on the day side were called into a staff meeting by Mr. Honce who was then—his title had changed by that time to the Executive News Editor in charge of the Day Report.

Q. And was that a position of considerable importance?

A. Yes. I had previously referred to him as Division News Editor for New York, and that setup was later changed so that all of this time I am speaking of now, Guild activities, and so forth, he was Executive News Editor in charge of the Day Report.

Q. That is, he is in complete charge, complete supervision?

A. So far as we ever knew in the office he was.

Q. What was the subject of the conference with Mr. Honce?

A. Well the meeting started out to be—it was ostensibly [fol. 284] an ordinary staff meeting discussing the work

of the Associated Press. But about the middle of it Mr. Honce wanted to know if—I think I need to explain here, Mr. Moscovitz, that before this there was a second meeting of the unit at which the collective bargaining request was suspended indefinitely.

Q. I thought you had mentioned that.

A. No, that was a meeting on the 17th.

Q. When was this?

A. The 27th, after the committee had met Mr. Cooper and reported back. I also neglected to state that Mr. Cooper had told the committee the request of the Guild was leaving things up in the air about the 5-day week.

Q. When did that take place?

A. This took place at the meeting of the committee with Mr. Cooper, between August 17th and August 21st.

Q. Were you on a 6-day week at that time?

A. We were on a 6-day week at that time.

Q. And the question came up of the 5-day week at that time?

A. Yes.

Q. And you suspended your effort to pursue the 5-day week?

A. That is right.

Q. And was that at the August 21st meeting?

A. Yes. And at that meeting I also—it was the largest unit meeting ever held because Guild members were instructed by the executives to attend it, and in some cases the executives themselves sat in at wires or relieved the men so they could attend the meeting.

Q. Why was that?

A. Well, I presume because they knew the meeting was going to withdraw the collective bargaining request.

Q. Were you at that meeting?

A. Yes.

[fol. 285] Q. And will you explain in some detail now so we can get it clearly, exactly what took place?

A. Well, after the committee reported that Mr. Cooper had indicated we might get the 5-day week if we withdrew our collective bargaining efforts, that is our efforts to bargain through the American Newspaper Guild, the unit voted to suspend the request indefinitely. I opposed it, saying that——

Q. Was Mr. Cooper there at the time you objected?

A. No. This was strictly a Guild meeting.

Q. Strictly a Guild meeting?

A. Yes.

Q. All right.

A. I opposed withdrawing the request on the ground that it just meant a weakening of the Guild, and that we would only hold the 5-day week for a little while and it would be taken away from us again—which it was in the end. But the collective bargaining request was withdrawn nevertheless, or suspended rather, and that comes back to the meeting now that Mr. Honce called—the staff meeting. It was in the middle of that meeting——

Q. Was that August 27th now?

A. I believe it was August 27th. It was in the middle of that meeting that he asked us if we weren't taking a chance in leaving in the hands of the Newspaper Guild authorizations to represent which had been signed by the individuals.

Q. And who attended this staff meeting?

A. All of the reporters and editors of the day side, excluding cables and sports.

Q. Was the meeting called by Mr. Honce?

A. Yes.

Q. During working hours?

A. No, immediately after working hours

[fol. 286] Q. And was he the one who presented the question that was before you?

A Yes.

Q. And how did he proceed?

A. Well, I told him that the request to, or the authorizations to represent were in my hands and that I would not give them up.

Q. Did he state the men should withdraw their authorizations?

A. He seemed to be concerned because they had only suspended the request for collective bargaining and not rescinded it.

Q. And this meeting was the result of the information he had received about the suspension of your collective bargaining activities; is that it?

A. As a matter of fact, the Associated Press was officially informed by Mr. Edy that the collective bargaining request had been suspended.

Q. When you say at this meeting he seemed concerned that there was only suspension and not discontinuation, will you explain to me how he brought that to your attention?

A. Well, if I remember correctly he asked us if it wasn't dangerous for us to leave these authorizations to represent in the hands of others without rescinding the resolution.

Q. What else did he say? Did he speak with you individually at that time?

A. I don't remember that he did.

Q. You mentioned before that he made some inquiries as to who held the authorization blanks.

A. That was at the meeting.

Q. Did you make any answer in response to his inquiry?

A. I told him that I held them.

Q. Yes. And did he suggest they be given up?

[fol. 287] A. No. I said that they would not be given up and nothing further was said.

Q. Now, was a similar meeting——

A. Let me—I have in my statement here a more accurate picture of that meeting.

Q. I wish you would give it.

A. Could I read that paragraph?

Q. Yes.

A. On August 27th reporters and wire filers of the day side were called in to a staff meeting by Mr. Honce and asked if they were not "binding themselves to outsiders and ceasing to be free agents" since they voted to suspend collective bargaining rather than to rescind. He suggested, not exactly directly, and I do not remember his exact words, that the Associated Press employees who had given their authorizations to bargain should get these authorizations back. He asked me who had them. I told them they were in my possession and I would not give them up.

Q. Now, was that statement which you have just read something which you have written from your own recollection of that meeting?

A. It is. This statement was written by me immediately after my discharge when things were a great deal fresher in my mind than they are now.

Q. Now, was any other similar meeting called at a subsequent time?

A. Yes, on the following day.

Q. By whom?

A. By Mr. J. Marmon Kendrick, then Executive News Editor in charge of the night reporting.

Q. What was the subject of that conference and who attended?

[fol. 288] A. I have a paragraph here about that meeting. So far as I am concerned it is hearsay because I did not attend the meeting.

Q. Do you know that a meeting was called?

A. That is right.

Q. And you say it was the following day from the one you attended?

A. Yes.

Q. Do you know what part of the day it was?

A. It was during the afternoon.

Q. And do you know who attended?

A. The reporters and editors on the night side who came under the direct supervision of Mr. Kendrick.

Q. They were the people who work after four o'clock?

A. Yes, for the most part. Some go to work at noon, or at two o'clock.

Q. Just a different shift from the one you were on—the same type of work?

A. That is right.

Q. And do you know what took place at that meeting?

A. Not of my own knowledge.

Q. Was it reported to you?

A. Yes.

Q. By whom?

A. By several.

Q. Members of the Guild and employees?

A. Yes.

Q. People who had attended?

A. Yes.

Q. And what report did you receive?

A. I was told that they were frankly asked to quit the Guild by Mr. Kendrick. I was also told that Mr. Kendrick broke down and wept, actually wept, and told them that their continuance in the Guild was a reflection on his own ability as an executive.

Q. Was the subject matter of the conference in other respects similar to the one that was held with you people?

A. Generally so, I was told.

Q. Now, were any changes made in the nature of your employment after these meetings?

A. Yes.

[fol. 289] Q. When?

A. Immediately after that, or at least within a week or two, I was transferred to the filing of the south wire.

Q. What is filing the south wire?

A. I previously explained the mechanics of filing a wire.

Q. Was that the situation you described where you fed the puncher?

A. Yes.

Q. And had you ever done that type of work before?

A. I never had.

Q. And something entirely new for you?

A. Yes.

Q. You had never handled it at all at any time?

A. No.

Q. Were you fitted for it by experience or by temperament?

A. By neither.

Q. And why do you say you weren't fitted for it by temperament?

A. Well, I never could sit at a desk all day.

Q. You have to be active?

A. Yes.

Q. Did your notify your superior of this fact?

A. Yes.

Q. Who did you notify?

A. Charles E. Honce.

Q. And what particular wire did you work on? You say the south wire?

A. The south wire.

Q. Day wire or night?

A. Day.

Q. Did this wire have a particular reputation among your fellow workers?

A. Yes. It was known as a wire on which many complaints could be expected. The southern editors were hard to get along with.

Q. One of your irritating spots?

A. Yes.

Q. What was the wire commonly termed—complaint wire?

A. No, I don't know that it had a common term. It was [fol. 290] known as a hard wire to file.

Q. And did you work hard at this particular job?

A. Very hard.

Q. Were you criticized *by* the manner in which you did your work?

A. Only once.

Q. What was that complaint?

A. I permitted the prefix "Mrs." to remain in front of the name of a Negro woman.

Q. And was that the only complaint?

A. The only complaint I ever got.

Q. Well, what is the story of the complaint that was made about your work?

A. Well, the Atlanta Bureau on that occasion sent back the message rather saying, "We have repeatedly complained of calling a Negro "Mrs." or "Mr." and this has happened again." They were very mad about it.

Q. Was this work that you were doing on the wire a demotion?

A. Well, I considered it so for me.

Q. And why did you consider it so?

A. Because I consider myself more valuable as a reporter, much more valuable to the Associated Press as a reporter.

Q. Is it the type of work a man who had been handling the sort of assignments you had been handling would ordinarily do?

A. It was not.

Q. Was it a job of less responsibility?

A. No, I wouldn't say that, Mr. Moscovitz.

Q. You wouldn't say that; the responsibility is something that has to be kept, sustained; is that it?

A. Yes.

Q. Did it entail, however, in the eyes of your workers considering the fact you are acquainted with the manner [fol. 291] in which newspaper men operate, a loss of cast-?

A. Well, that would be difficult for me to say.

Q. Did it involve a change in salary?

A. No.

Q. Did you continue your Guild activity after this?

A. Yes.

Q. And will you describe what activities you engaged in after your change of work?

A. Well, on one occasion I went to Hyde Park in company with Heywood Broun, Jonathan Edy, Carl Randal, and James N. Kernan to see the President to request the President to impose a code upon Press Associations.

Q. Do you remember that date?

A. I might find that in the statement.

Q. Was it November 5, 1934?

A. It was, yes.

Q. Did it become necessary for you to go to Washington on Guild business at any time after this?

A. Yes.

Q. When was that? Do you recall?

A. Did you say November 5th?

Q. Yes.

A. Yes, that is right. Exactly a month later—on December 5th.

Q. That was the date you went to Washington on Guild business?

A. Yes.

Q. Was that 1934?

A. 1934. No wait a minute. Yes, that is right.

Q. Did this day fall on a regular working day?

A. Yes.

Q. Did you attempt to make arrangement to get the day off?

A. I did make arrangement. I arranged with the relief editor to work the south wire on that day, instead of the day which he ordinarily would work—I forget whether I [fol. 292] was off on Monday or some other day. I told Mr. Tom O'Neil, who is a newspaper supervisor on the day side, wire supervisor, that I had made the change and he said it was all right.

Q. Is it usual for employees, before you go further, when the occasion arises to switch days when a day off is desired?

A. Yes, it had been.

Q. Could this be done without interfeernce with your work?

A. Yes, very easily.

Q. Is it a customary thing?

A. Yes.

Q. You say you took this matter up initially with Mr. O'Neal?

A. No, originally with the relief editor to see if the trade was satisfactory with him.

Q. How did Mr. O'Neal come into the picture?

A. I merely asked him if it would be all right, and also to inform him that it would be done, so he would know if I did not show up.

Q. Who is Mr. O'Neal?

A. He was the news supervisor.

Q. Did he grant you permission to go?

A. He did.

Q. What happened after he had granted you that permission?

A. He came back and withdrew the permission.

Q. Did he explain?

A. He said Mr. Honce told him there was a rule against charging days off.

Q. Had you ever heard of that rule before?

A. I never had.

Q. What did you do then?

A. Then I wrote a note to Mr. Honce and asked him formally for a leave of absence.

Q. Did you state why you wanted the day off?

A. I didn't at that time.

[fol. 293] Q. Did you receive word from Mr. Honce whether or not you could go?

A. I didn't and later in the day, I would say four or five hours later, when the note was still unanswered, I sent him another note asking him if I could have an answer and he appeared to be rather angry because I had not stated why I wanted the day off.

Q. And did you explain to him why you wanted to take the day off?

A. I told him I had entered an appearance at the N. R. A. hearing in Washington.

Q. Was that in the Jennings case?

A. No, not in the Jennings case. It was on the newspaper code.

Q. I see.

A. The determination of minimum wages.

Q. Did he eventually grant you the permission?

A. He did after considerable argument in which he said —I forget his exact words now—he thought I had been very impolite to him by not stating in the first place why I wanted it, and he seemed to be very piqued because I had entered an appearance at the hearing without informing

the Associated Press about it. The next morning or that evening he called me up on the telephone at my home and argued about an hour with me, asking me to withdraw the request and I would not withdraw the request for a leave of absence, and I asked him to say yes or no and said there wouldn't be hard feelings one way or the other, and the next morning when I came to work he said it would be all right.

[fol. 294] Q. How long did you stay at your wire filing job?

A. Until January, either the last week in December or about January 1, 1935.

Q. Was your change coincident with a change in administrators?

A. Yes.

Q. At the Associated Press?

A. Yes.

Q. What was that change?

A. J. M. Kendrick was made Executive News Editor in charge of the day report. Mr. Honce was made Executive News Editor in charge of the Sunday report. And W. F. Brooks was made Executive News Editor in charge of the night report.

Q. And were you at that time changed from the filing wire?

A. Yes.

Q. And what was the change that took place?

A. I was put in charge of the Hauptmann desk, the Hauptmann trial in the New York office.

Q. Is that the city desk?

A. It was a special desk set up for it.

Q. How did you handle the Hauptmann desk?

A. I was head of the desk and with one assistant handled all the copy from the Hauptmann trial in Flemington which came to the Associated Press over five special wires, three of them devoted to the sending of transcript. I wrote all of the leads and supervised all the other copy that came through that desk.

Q. You were in complete charge of the desk in the Hauptmann story?

A. That is right.

Q. Were there special wires set up?

A. Five of them.

Q. Five special wires?

A. From the court house in Flemington into the Associated Press office in New York.

[fol. 295] Q. They were kept constantly open for this purpose?

A. Yes.

Q. Was there news constantly flowing in?

A. Yes. Well, by constantly, from the time the trial opened in the morning until after it had closed at night.

Q. That is what I mean. What would you do with it? Make whatever revision and editing might be necessary?

A. No, I wrote all the leads.

Q. What do you mean by leads?

A. Well, the main story—taking the information from the running story supplied by the Associated Press reporter in the court room, and from the transcript which was sent in takes—I don't know how many stenographers they had in the court room—but they had enough so that every ten minutes or five minutes or so of testimony was put on wires as fast as it came out.

Q. And of course that was the important story of the day, wasn't it?

A. At the time it was, yes.

Q. Did you have special wires set up for transmission or——

A. For transmitting the news after it left the Hauptmann desk.

Q. It went out in the regular channels?

A. Regular channels, except on some occasions where—well, the transcript came on special wires and was at the same time given to I think, about thirteen newspapers who were in this business of having court reporters take the testimony in takes and put it on the wire. They were all Associated Press members except one. The New York Journal was in on it. But the Associated Press took charge of setting up the wires and transmitting it.

[fol. 296] Q. Did you receive any praise or criticism for the work you did on the Hauptmann case?

A. Yes.

Q. From whom?

A. From various wire editors that were handling it.

Q. That is praise, you mean?

A. Yes, praise.

Q. And did you receive any criticism?

A. Well, there might have been expressed criticism of a very minor nature as to how a lead was handled which might come from the Executive News Editor, in which case the lead would be rewritten to his satisfaction, or something like that. Just a matter of routine.

Q. So that, when the Hauptmann story broke you were taken from the wire filing job and put on the desk of what was the greatest news event of the day; is that it?

A. Yes.

Q. And what happened to you at the conclusion of the Hauptmann trial?

A. Well, I suffered a collapse, sort of a breakdown. I had to get a leave of absence.

Q. You took a leave of absence?

A. Yes.

Q. For how long?

A. For two weeks in addition to my vacation. I had the dates moved up on the vacation.

Q. What was your breakdown attributed to?

A. I attributed it to the service on the wire filing.

Q. You mean several months on the south wire?

A. Yes.

Q. Did you, at the expiration of your vacation, return to work?

A. Yes.

Q. Did you notice any change in employment relation at this time?

A. I thought I was passed over on stories.

[fol. 297] Q. You were being passed over on regular stories?

A. Yes.

Q. Why, if this is the case—I mean if you feel this way about it, why would you say the Associated Press assigned you to the handling of the leads in the very important Hauptmann case?

A. Well, I believe they didn't have any other rewrite man in the place at the time available at the time who could handle it with the speed they wanted it handled.

Q. You mean that there wasn't one there available upon whom they could depend for their purpose?

A. I wouldn't say that certainly but there probably were many who could have but I was told by several people—

I mean it was a manner of comment in the office that the Associated Press had taken me off the wire to handle that story because they couldn't do without me.

Q. But you do know there were other people working there at the time so that the Associated Press had a choice from whom they could pick and that you were picked; is that right?

A. Yes.

Q. You say you were picked from the south wire. You say that you attribute your experience there to the fact that you had a breakdown?

A. Followed of course by the Hauptmann trial which was a very drilling——.

Q. A very drilling experience in itself?

A. Yes, because the leads were constantly being turned out, sometimes as many as twenty in a day.

Q. Well, doesn't the south wire—it seems to me that I at least heard the south wire had some particular name which set it off from other wires in use at the Associated [fol. 298] Press. Do you recall?

A. Well, just the south wire.

Q. It is not called the dog house, is it?

A. Well, that is what I called it.

Q. That is what you called it. Was that what anyone else called it?

A. I don't know specifically, Mr. Moscovitz. I was going to say it was generally commented around that I was in a dog house, but then, any wire would have been a dog house for me.

Q. Did Mr. Kendrick ever speak with you about your transfer from the wire to the desk?

A. Yes, shortly after he was made Executive News Editor in charge of the day report, I met him at a cocktail party and he told me at that time he was going to take me off the wire and put me back on the city desk. And he said that there was much that he could do for me but that if I continued to embarrass him with the Guild, why, then he didn't know—and he shrugged his shoulders. That was the extent of the conversation.

Q. And can you fix that as to time approximately?

A. I think it must have been the middle of December, 1934.

Q. Did Mr. Elliott ever speak with you about your Guild activities?

A. Yes. Several times.

Q. And when was that?

A. I don't believe I can fix an exact date except the one occasion on which I talked to him after the open letter to the N. R. A. I have given you the date of that letter—March, I think.

Q. The letter is in the record.

A. I may have it in my statement.

[fol. 299] Trial Examiner Clark: All right, we will suspend until two o'clock.

(Whereupon on 1:00 p. m. a recess was taken until 2:00 p. m.)

Recess.

(Hearing resumed pursuant to recess taken.)

MORRIS WATSON, witness on the stand at the time of recess, resumed the stand, and continued his testimony as follows:

Direct examination continued.

By Mr. Moscovitz:

Q. Before we recessed for lunch, Mr. Watson, I asked you whether or not Mr. Elliott, had ever spoken with you about your Guild activities, and you had proceeded to answer and we were interrupted. Now, you might start at the beginning and tell me the story, if there is one on that point.

A. Well, on several occasions, I don't remember all the details about conversations, but Mr. Elliott had long talks with me in which he told me that unionization was not for newspaper men, that they were of special character, didn't need unionization, and on one occasion he told me that he could not understand why a man of my abilities and talent would be interested in a reporter's union and on one of these occasions, he said, "You are the best reporter we [fol. 300] have." He indicated several times, I don't remember the details of all of them, or when they were held, that I would have a very brilliant future with the Associated Press if I kept my skirts clear.

Q. Well, can you tell me whether or not these conversations took place immediately before your discharge, or some time before, or were they interspersed over a period of time?

A. They were interspersed over a period of time, which was considerably before my discharge.

Q. Starting after you became associated with the Guild?

A. Yes.

Q. Was there any further change in the nature of your employment at any time after you had finished your Hauptmann assignment?

A. Yes, in the midsummer, after returning from leave of absence and vacation.

Q. Midsummer of 1935?

A. Yes. I was transferred to the early shift, that is, twelve midnight to eight A. M.

Q. Who transferred you to that?

A. J. M. Kendrick.

Q. And Mr. Kendrick is what?

A. Executive news editor in charge of the day reports.

Q. Well, was the early shift, that is the shift you were transferred to?

A. Yes.

Q. You say it is work which is done during what hours?

A. Between twelve midnight and eight A. M. in the morning. It is the beginning really of the day shift, of the day news report.

Q. Is the type of work that is done during these other shifts the same, the only difference is that it is done at this——

A. It is not exactly the type of work for a reporter, that [fol. 301] is, it is not exactly comparable to the other shift because all the work is inside. It is on rare occasions that a man would go out during those hours on a story.

Q. If you worked other shifts, it is not unusual for you to go out and do an assignment?

A. Yes, if you are a reporter.

Q. Of course, if you are a reporter, and up to the time of your discharge you were a reporter with the exception of the period on which you worked on the wire; is that it?

A. That's right.

Q. Who usually works the early shift?

A. Well, they have one reporter, two wire editors and a man in charge, an early editor. That may vary up or

down by one, but generally I think that is the character of the early shift.

Q. That is within the department described by Mr. Stratton as the news department?

A. Well, that does not include, however, there is also a cable editor and a sportsman.

Q. Yes. Do you also call it the news department?

A. Yes.

Q. Is it called the editorial department too?

A. Yes.

Q. So when you say editorial department you might mean at the same time, news department?

A. That's right.

Q. The words are used interchangeably?

A. Yes.

Q. And the work is the same as during the other shifts with the exception of the fact that you do not get as many outside assignments, is that true?

A. I would say generally that was true.

Q. Is it considered among newspaper men as a punish-
[fol. 302] ment for a man who is in your position to be transferred to an early shift?

A. I considered it a punishment, and most of the people in the office did consider it so, most of the people that I talked to.

Q. Is it the shift that a man with your experience would ordinarily be assigned to?

A. Generally speaking, no. If a man is considered valuable as a reporter, he is not generally assigned to the early shift because any value that he had as a reporter would be altogether lost there.

Q. Is it a harder shift to handle, from the point of view of type of work being done?

A. Well, from the point of view of skill, it is an easier shift.

Q. Would you say that it was a less responsible position than the handling of the other shifts?

A. Well, that calls for a rather fine conclusion—yes, I would say generally it is slightly less responsible.

Q. Did you ever work an early shift before?

A. Only as a relief, when they were short on the early, I would work for three or four days, or a week.

Q. Is is usual for the Associated Press to put their younger men on early?

A. Yes, newer men.

Q. Newer men. Is it considered as a breaking in place for that type of work?

A. No, I don't think so because the opportunity to break a man in there is not very large.

Q. Well, would they put their most experienced men in the early shift?

A. No.

Q. What shift would get the most experienced men?

A. The day City News staff.

Q. And is that the staff that you had been working on?

A. Yes.

[fol. 303] Q. So that your shift to early was something foreign to the shift that you had ordinarily been associated with?

A. Yes, the shift was protested by the city editor. At least I was told by him that he protested the shift.

Q. I see. Well, who was the city editor?

A. Mark Barron.

Q. Was he willing to make this transfer? He protested to whom?

A. To Kendrick.

Q. What did he say to him?

A. I don't know exactly what he said to Mr. Kendrick but he told me he protested to Mr. Kendrick and told him he needed me on the Day City desk, and Kendrick was impervious to all protests, said I had to go on early.

Q. Barron told you that himself?

A. Yes.

Q. What was he at the time?

A. City editor.

Q. Was he your immediate boss?

A. Yes.

Q. Isn't it unusual to newspaper work for the city editor not to be able to have the pick of the men in the office?

A. It is unusual for an Associated Press office because historically, traditionally, the Day City editor had always had his pick of men.

Q. That had been the custom of the Associated Press?

A. Yes.

Q. Do you know whether a man has ever been taken, to your knowledge, from the city desk over the city editor's protest?

A. To my knowledge, never, except in promotion in which case the city editor would not be likely to protest.

Q. This was considered then by the city editor as a demotion?

A. Yes, well, I don't know if the city editor considered it a demotion for me to be taken away from him, but he [fol. 304] considered it bad for the city desk at that time. At least, he told me so.

Q. Did he explain to you why he considered it bad for the city desk?

A. Yes, especially because the second Mackay-Graham trial was about to come up and he was depending upon me to cover that.

Q. Did this transfer have any particular effect on your physical being?

A. Yes, I never had been able to work the early. It is a particularly hard shift unless you get used to it. And it is especially hard on a family man, if he has children running around the house in the day time.

Q. Are you married?

A. Yes.

Q. Do you have a family?

A. Yes.

Q. Did you protest your transfer to Mr. Kendrick?

A. Personally.

Q. What was his response to your protest?

A. I told him that—do you want me to go back just a second?

Q. Yes.

A. I told him that it was well known that I had never been able to work the early hours, had never been efficient, as efficient on the early as I would be on the day hours, and he said, well he couldn't help it, he had to have a good writer on the early. I said, "Well, if that is the case, it seems to me that a raise in pay should logically follow." He said there wasn't going to be any raise in pay, that if I didn't want the assignment, I knew what I could do.

Q. When did this conversation take place?

A. I believe a day or so before I actually made the transfer.

Q. What month?

A. I think it was around June or July.

[fol. 305] Q. June or July of 1935?

A. Yes.

Q. Had you ever, at any time, before this transfer to early, been engaged in any Guild activity with newspapers outside of the Associated Press?

A. Yes, the day before I was informed of my transfer, I was spokesman for the Newspaper Guild of New York in an attempt to negotiate with the Brooklyn Eagle.

Q. And the Brooklyn Eagle is a member of the Associated Press?

A. It is.

Q. With whom did you speak at the Brooklyn Eagle?

A. I forget the man's name, he was auditor of the Eagle and was at that time chairman of the New York Publishers Association.

Q. Is the Associated Press a member of the New York Publishers Association?

A. I don't think it could be.

Q. But you do know the Brooklyn Eagle is a member of the Associated Press?

A. Yes.

Q. Was that the day immediately before your transfer to early?

A. That was the day before I was informed that I was being transferred to the early. The transfer took effect three or four days after I was informed of it.

Q. Did you persist in your protest to Mr. Kendrick regarding your transfer?

A. Yes.

Q. When did you make this added protest?

A. Well, I protested from time to time, almost every time I saw him.

Q. Practically continuously until the day of your discharge?

A. Yes.

Q. What was the subject of your conversation after you had made your first protest to him? Did you point out to [fol. 306] him that in your opinion you were being punished, or that it was an undue hardship on you, or that it was a mistake for them to put you in this position?

A. I set down the conversations I had with him in that connection. If you will permit me to read them from this statement, because it refreshes my memory. I told Mr. Kendrick that I believed he was keeping me on the early

merely as punishment and that I would not mention it except that it was also the opinion of everybody else in the office. He denied there was any punishment connected with my assignment, and repeated that I was on the early because of the need there for a good writer. I asked him specifically if my work had fallen off on the city desk and if that was the reason for my transfer. He said: "No, it is nothing like that." I said, "It is well known that men are transferred off the city desk when their work is not considered excellent. It is also well known that my greatest value to the Associated Press is as a trial reporter. I have not been so assigned in months. Maybe I am slipping." "I cannot stop you thinking that", he said. Somewhere in the conversation he said: "It is true that your activities with the Guild has lessened your value to the Associated Press". He said that to prove that I was not being punished for attempting collective bargaining as an Associated Press member, referring to the Brooklyn Eagle, that this was the first that he had heard that I had been the spokesman on such negotiations. I told him that other publishers had asked that I be punished and that it would not surprise me if the Brooklyn Eagle had also. He said: "No pub-[fol. 307] lishers have ever asked the Associated Press to punish you". "You wouldn't call the general manager a liar would you?" I asked He told me he received many letters asking for my discharge. "Oh, well," Kendrick replied, "perhaps they have asked that you be discharged, but no one has asked that you be punished". At one point in the conversation, he said, "Why, you have said many things about the Associated Press". "If I had said about the Associated Press things that you have said about the Associated Press, I would quit the Associated Press".

Q. Yes. Now, how did these conversations happen to take place? Were they in response to inquiries made by you?

A. Yes, sometimes I would wait over in the morning for him to come to work. He usually arrived at work about nine o'clock and I was through work at eight o'clock in the morning and I would wait for him to come in.

Q. Now, during the period that you had been transferred to early and during the period which you had been having these conversations with him, did you handle any important assignments?

A. Yes.
Q. When was that?
A. Re-write assignments.
Q. When was that?
A. In September.
Q. 1935?
A. Yes.
Q. Was that during the early shift?
A. Yes.
Q. Was that part of your regular duty?
A. Not ordinarily it wouldn't have been, because my job on the early was to handle local news for the early reports, but in that particular month there were two big stories that broke in the south. That was the time the steamship [fol. 308] "Dixie" struck a reef and at the same time a hurricane struck Florida.
Q. Explain how you happened to handle those stories?
A. Could I read from the statement again?
Q. Yes. Well, if you could, without going into the statements to answer the question, I would prefer it.
A. Well, as I remember the "Dixie" story was very badly handled by the southern bureau.
Q. From what angle?
A. Well, it was just not adequate in the writing.
Q. From what end was it badly handled?
A. From the Atlanta or Miami end.
Q. You mean at the Atlanta or Miami bureau, they would dispatch it here to the Associated Press in New York, and it would come into your shift which was early and who decided it was poorly handled?
A. The early editor. At that time the acting early editor was Mr. Tom O'Neill.
Q. How did you happen to get the assignment for rewrite. Now, if it is necessary for you to refresh your recollection by looking at your notes, I would just as soon you do so and read me your answer?
A. Well, the story broke at about twelve thirty A. M.
Q. What date?
A. I don't have the date—September, 1935, in that month. I asked O'Neill if I should handle it. He said the story belonged to Miami and that all we would handle from New York would be what bulletins we could get out of Radio Marine Corporation or Mackay Radio by telephone. Later

in the morning, about six o'clock, I told O'Neill I thought the lead was very badly done, that it lacked the excitement that appeared to be justified by the story.

[fol. 309] Q. Was that the "Dixie" story?

A. Yes.

Q. Go on.

A. He said, "Go ahead and see what you can do".

Q. Did you then handle the matter?

A. I did.

Q. Well, did Mr. Kendrick or anyone else ever see you doing this work?

A. Kendrick came in early. I believe if you would let me read the statement here, it has it in detail.

Q. All right.

A. My memory is a little hazy. A few minutes later Kendrick came into the office. He immediately gave instructions for a second lead along certain lines and I wrote it to his satisfaction. The next night, details began trickling into the office on the hurricane which had struck Florida and which had, in fact, caused the "Dixie" to strike a reef. On this night, O'Neill instructed me to handle the "Dixie" story, and I am not to handle the storm story, he said, that it could be handled by Miami, that is, Atlanta, writing under Miami date-line. When the storm story came in from Atlanta, it was very poorly done. O'Neill then had me write an addition to it out of the nightside copy, and I had hurriedly to read up on a mass of stories to satisfy within a few minutes, O'Neill's demand for color. While I was doing this, Kendrick again came into the office early and was dissatisfied with the lead that Atlanta had sent. He asked that another lead be written immediately and I wrote it or rather typed it, with O'Neill dictating. That was my only connection with the storm story that night. On the next night when I came to work, O'Neill showed me a copy of a note from Kendrick which was to the effect that he was lending to the early the services of [fol. 310] Mr. Richard Hippleheuser. The note said that he, Kendrick, wanted Hippleheuser to handle one of the big stories, myself the other, that being either "Dixie" story, or the storm story. The note said: "Tell Watson to give

it all he has. His work the last two nights has not been up to snuff."

Q. Now, Mr. Watson, right at that point will you tell me what kind of paper that note was written on?

A. It was written on white paper, the type that is usually sent up to the business office to be put up in the personnel record of the employees.

Q. Is it usual that notes regarding directions to men be written on such official paper?

A. No, usually they are written on message paper.

Q. But in this particular instance, paper was used which would be placed in the official personnel file?

A. That's right.

Q. Had there been any protest by any one of your work so far on the case?

A. No, not to that time.

Q. Did you receive any compliments regarding it?

A. I did not, no.

Q. Anyone else receive it, to your knowledge?

A. Yes, if I remember correctly, compliments were sent to the southern bureaus by the general manager.

Q. By the general manager of the Associated Press?

A. Yes.

Q. Regarding the story which you would handle?

A. Yes.

Q. You mean you would handle the story from this end?

A. Yes, that is, the following night, not before then.

[fol. 311] Q. Would the story appear under someone else's name?

A. No, just under a Miami date-line.

Q. As an Associated Press date line?

A. Yes.

Q. In the southern papers?

A. All over the country.

Q. And compliments were received of those in the New York office?

A. I don't know about that, I know a message did go out to the southern bureau, I believe Atlanta and to Miami from the general manager, either a message or a letter, as I recall, complimenting them for the way the stories were covered.

Q. And that is on the stories which you handled?

A. Yes.

Q. Did you speak with Kendrick about it?

A. I complained to him that the note was very unfair, since he was blaming me for work that had been poorly handled in the south, and he said that, "O'Neill told me on both nights that he put those stories into your hands and made you responsible for them".

Q. Yes. And when you say that you had complained to Kendrick about it, you are referring to the notice that was placed in the official personnel file?

A. Which I presume was placed in the official personnel file.

Q. What did he tell you?

A. He said he would speak to O'Neill about it.

Q. And did you ever hear anything further on it?

A. I never did.

Q. Did you pursue it further?

A. No.

Q. Why not?

A. Well, after the compliment had gone down south, I thought——

[fol. 312] Q. Thought everything was all right, is that it?

A. I thought there wasn't much use to make further complaints?

Q. Did you handle any more important stories during this same period?

A. I did re-write on the Huey Long story.

Q. Did you write the leads or the re-writes? If you are not clear on it, you might refresh your recollection by looking at your notes.

A. Well, I have here in my notes that when United States Senator Huey Long died, I wrote the main early lead under a Baton Rouge, Louisiana, date-line.

Q. Did you receive any compliments on that?

A. I did not. The Baton Rouge Bureau did.

Q. The Baton Rouge Bureau receive a compliment?

A. Yes.

Q. On the dispatch you had prepared?

A. That's right, on the handling of the story.

Q. Did you continue the handling of the Long case after this?

A. Yes, at a later date, the acting early editor who then was Mr. Joseph Shayer said that they had been leaving the play in the Sun on the Long story. This was after his

death, the political mess down there, and asked me if I would re-do the story when it came in from New Orleans.

Q. Did you follow his instructions?

A. I did.

Q. Was the story printed?

A. In the Sun.

Q. What value does the Associated Press place on the play it gets in the New York Sun, if you know?

A. Great value.

Q. Why is that, do you know?

A. I don't know. They have always, since I have been there, made the Sun the criterion of play of stories.

[fol. 313] Q. Had there been any change in the Associated Press work day up to this date?

A. Yes, the five day week was withdrawn.

Q. As of when?

A. August 7th, 1935.

Q. 1935?

A. Yes.

Q. When did it go into effect?

A. It went into effect immediately.

Q. I mean, you say, the five day week was withdrawn. When did the five day week go into effect?

A. Shortly after we had made attempts to bargain in 1934. I think it was around late in August, or in September.

Q. Then it was in existence up until this date you have just mentioned?

A. Yes.

Q. Then they went back to the six day week.

A. Yes.

Q. Did you receive any notice regarding the change? Did you know there was going to be a change in the work week?

A. No, we received no notice at all. At four o'clock in the afternoon we were given a slip saying effective immediately the Associated Press returns to the six day week for editorial employees.

Q. This was August, 1935?

A. Yes, that was a Tuesday, I believe, and it affected those men who were off on any day except Monday. Those who were off on Monday that week were lucky.

Q. Now, did the Guild do anything about this?

A. Yes.

Q. When?

A. On August 9th, the unit met and adopted a resolution which I introduced asking the American Newspaper Guild to begin collective bargaining on its behalf.

[fol. 314] Q. And you say you introduced the resolution?

A. I did.

Q. Was there a referendum taken?

A. Yes.

Q. When was it completed?

A. August 11th.

Q. Was it August or October? August?

A. It was August. Wait a minute—this is wrong. I gave you August the 7th, it was October the 7th, and October the 9th that the meeting was held, and it was on October 11th that the referendum was—

Q. Then it was October 7th that the Associated Press reverted to a six day week. Is that right?

A. Yes.

Q. And October 9th that the Guild met?

A. That's right.

Q. Was it October 11th when the referendum was completed?

A. That's right.

Q. And what was the final vote?

A. Seventy-two people voted.

Q. I don't want to get any figures, but what I am interested in is whether or not there was a great majority in favor of the resolution or whether it was a bare majority or what?

A. Just next to unanimous.

Q. Just next to unanimous?

Mr. Moscovitz: I want this marked for identification, please.

(Document referred to marked for identification, Board's Exhibit number fifteen, Witness Watson.)

[fol. 315] By Mr. Moscovitz:

Q. I show you Board's exhibit number fifteen marked for identification and ask you if that is the resolution?

A. Yes, it is.

Q. As proposed by you?
A. Yes.

Mr. Moscovitz: I offer it.

Trial Examiner Clark: Admitted.

(Document referred to received in evidence marked Board's Exhibit number fifteen, Witness Watson.)

By Mr. Moscovitz:

Q. Now, was anything done pursuant to the resolution?
A. Yes.
Q. When?
A. The next day, I believe, after the referendum was conducted, it was transmitted to the National Executive Board of the American Newspaper Guild.
Q. By whom?
A. By the Secretary of the unit.
Q. Do you recall whether anything happened after that?
A. Yes.
Q. What?
A. On October 17th, Mr. Heywood Broun, Chairman of the National Executive Board, and President of the American Newspaper Guild sent a letter to the Associated Press, marking it for the attention of Kent Cooper, asking for a meeting for the purposes of collective bargaining.

Mr. Moscovitz: I want this marked for identification, please.

(Document referred to marked Board's Exhibit number sixteen for identification, Witness Watson.)

[fol. 316] By Mr. Moscovitz:

Q. I ask you if that is a letter sent to the Associated Press by Heywood Broun, to which you have just been referring?
A. That is a copy of the letter.
Q. A copy of the letter.

Mr. Moscovitz: I will offer that.
Trial Examiner Clark: Admitted.

(Letter referred to received in evidence, marked Board's Exhibit number sixteen, Witness Watson.)

By Mr. Moscovitz:

Q. Was a reply received to that letter to your knowledge?
A. Yes.

Mr. Moscovitz: Will you mark this for identification.

(Letter referred to marked for identification, Board's Exhibit number seventeen, Witness Watson.)

By Mr. Moscovitz:

Q. I show you Board's exhibit number seventeen marked for identification. Is that the reply received?
A. Yes.

Mr. Moscovitz: I offer that.
Trial Examiner Clark: Admitted.

(Document referred to received in evidence, marked Board's Exhibit number seventeen, witness Watson.)

[fol. 317] By Mr. Moscovitz:

Q. Do you know whether or not the Guild, either through its attorney, or otherwise, then communicated with the Associated Press?
A. Yes.
Q. In the same manner?
A. In the same manner?
Q. In the same matter?
A. In the same matter, yes.

Mr. Moscovitz: Will you mark this for identification, please?

(Document referred to, marked for identification, Board's Exhibit number eighteen, witness Watson.)

By Mr. Moscovitz:

Q. Is this the subsequent communication sent by the American Newspaper Guild through its attorney to the Associated Press? I show you Board's exhibit number eighteen marked for identification.
A. Yes, that is it.

Mr. Moscovitz: I offer it.
Trial Examiner Clark: Received.

(Document referred to received in evidence marked Board's Exhibit number eighteen, witness Watson.)

By Mr. Moscovitz:

Q. Do you know whether or not there has been a reply received from the Associated Press to that communication?
A. I saw a reply.
Q. You did see a reply?

Mr. Moscovitz: Will you mark this for identification, please?

[fol. 318] (Document referred to marked for identification, Board's Exhibit number nineteen, Witness Watson.)

By Mr. Moscovitz:

Q. Is this the reply, which you have seen? I show you Board's exhibit number nineteen marked for identification?
A. That is the reply.

Mr. Moscovitz: I offer it.
Trial Examiner Clark: Admitted.

(Document referred to received in evidence marked Board's exhibit number nineteen, Witness Watson.)

By Mr. Moscovitz:

Q. The correspondence which has just been introduced makes certain reference to the constitution of the American Newspaper Guild, which has been introduced as well as the constitution and by-laws of the Newspaper Guild of New York. Are you familiar with them?
A. I am not too familiar with the constitution of the New York Guild. I have read it.

Mr. Moscovitz: Will you mark this for identification, please?

(Document referred to marked Board's Exhibit number twenty, for identification, Witness Watson.)

By Mr. Moscovitz:

Q. I show you Board's exhibit number twenty, marked [fol. 319] for identification, and ask you if that is a copy of the constitution of the Newspaper Guild of New York?
A. Yes, I believe that is a copy of the constitution.

Mr. Moscovitz: I offer it.
Trial Examiner Clark: Admitted.

(Document referred to received in evidence, marked Board's Exhibit number twenty for identification, Witness Watson.)

Mr. Moscovitz: Will you mark this for identification, please?

(Document referred to marked Board's exhibit number twenty-one for identification, Witness Watson.)

By Mr. Moscovitz:

Q. I ask you if this is a copy of the constitution and by-laws of the American Newspaper Guild. I show you Board's exhibit number twenty-one, marked for identification?

A. Will you let me look at it for just a minute because there have been so many drafts——

Q. Certainly.

A. Yes, this is the present constitution of the American Newspaper Guild.

Mr. Moscovitz: I offer it.
Trial Examiner Clark: Admitted.

(Document referred to received in evidence marked Board's Exhibit number twenty-one, witness Watson.)

[fol. 320] By Mr. Moscovitz:

Q. You say, it was October 17th when the letter was sent by Mr. Broun to Mr. Kent Cooper? Did anything happen to you the following day?

A. Yes. The following day, shortly after noon, around one o'clock or so, I was called into the office with a story. I was told that Mr. Kendrick wanted to see me right away.

Q. Did you go to see Mr. Kendrick?

A. I did.

Q. What time of the day was it?

A. About a quarter after two in the afternoon

Q. What took place?

A. He said, "I am discontinuing you today and giving you a month's pay."

Q. You say this was October 18, 1935?

A. Yes.

Q. Did he give you a reason?

A. Not at first. I asked him for the reason and he said, "Because we are dissatisfied with your work, you are dissatisfied with us, and I am convinced that you will be happier elsewhere."

Q. What did you do then?

A. I walked out of the office.

Q. That is the last you worked for the Associated Press?

A. Yes.

Q. Any efforts made by you or by your representative or representatives to secure reinstatement?

A. I am not familiar with the direct efforts. I haven't made any efforts to secure reinstatement except through the Wagner Board.

Q. Through the Wagner Board. And do you know whether or not the Guild as a unit took steps to secure your reinstatement?

A. Yes, I know that the Guild units met and adopted a resolution saying that I was fired for Guild activities and that I was, in their opinion, a newspaper man of unusual ability.

[fol. 321] Q. Was this brought to the attention of the Associated Press?

A. I understand it was.

Q. And you were not given an audience by the Associated Press as the result of that communication?

A. No.

A. Yes.

Q. You have not been called back at any time by the Associated Press for work?

A. No.

Q. The matter was then submitted to the National Labor Relations Board?

Q. In this region?

A. Yes.

Q. And what took place from then on you are not completely familiar with, is that right? After you were discharged, will you tell me whether or not there was a decline in Guild membership?

A. Yes, there was. That is—I understand from the Guild records, not being in the unit office myself, that the membership declined immediately after my discharge.

Q. And it has not picked up since, is that it?

A. Yes, it has picked up, I understand.

Q. When did it start to pick up? I mean there was an immediate decline after your discharge. Is that so?

—. ——.

Q. It continued on for some time?

A. Well, I don't think I can give you the best evidence on that, Mr. Moscovitz.

Q. You are not sure as to when it started to pick up again?

A. No, nor how rapidly it did.

Q. During the period of time you worked for the Associated Press, Mr. Watson, would you say that your work was of a character which made you an integral part of the process of handling that news which came in, was transmitted by Associated Press?

A. I would say so.

[fol. 322] Q. You handled such news as came in and handled such news as went out?

A. That's right.

Q. Are you presently employed?

A. Yes.

Q. When did you secure a new position?

A. Immediately after my discharge I went to work for the Federal Theatre project of the Works Progress Administration, getting on the pay roll about a month later.

Q. About a month after your discharge?

A. On November 21st.

Q. And what salary were you receiving on the date of your discharge?

A. From the Associated Press?

Q. Yes.

A. Two hundred and ninety five dollars a month.

Q. At the time you were discharged were you given a month's salary in advance?

A. Yes.

Q. Is it usual or customary for the Associated Press to give its employees a month's salary?

A. I had only heard of it in one instance before.

Q. To your knowledge it was done only one time before?

A. Yes.

Q. Have you been continuously employed by the Theatre Project since the first day you went with them?

A. Yes.

Q. You are in their employ at the present time?

A. Yes.

Q. What is your present position?

A. Manager-Producer of the "Living Newspaper".

Q. What salary do you receive?

A. Two hundred dollars a month.

Q. Are you ready, able and willing to go back to work for the Associated Press if the opportunity presents itself?

A. Yes, I am.

[fol. 323] Q. Just one or two further questions and I am finished. During the time that you worked for the Associated Press, did you ever handle the South American desk?

A. Yes, I was on the Latin-American desk, what was know- as the Latin-American desk, under Mr. Stratton, the head of it at that time.

Q. Can you tell me whether or not during the period that you were on that desk, the Associated Press had any news arrangement with the Venezuelan government?

A. Yes, it did.

Q. Are you familiar with the type of arrangement that was in *in* existence?

A. I am not familiar with the type of arrangement, but I know that letters came from the Venezuelan government from time to time above the news reports which they purchased, or purported to purchase, anyway, and at one time a letter came and enclosed in it was a check for, I am pretty sure, two hundred dollars, which was turned over to the Treasurer and accompanying it a letter with words to the effect "Herewith payment for a certain month's news reports".

Q. That was from the government itself?

A. The government of Venezuela.

Q. And the government of Venezuela is not a member of the Associated Press?

A. I don't see how it could be.

Q. Now, do you know whether or not the Keystone Picture Company, is that the name of it?

A. Keystone View Company, I think.

Q. Keystone View Company ever used photos of the Associated Press at any time during your association with the corporation?

A. Well, of my knowledge, there was a picture of Senator [fol. 324] Huey Long which I had posed for an Associated

Press Photographer, which was used in Collier's and many other magazines over the credit line "Keystone View Company".

Q. And Keystone View Company is not a member of the Associated Press?

A. I don't see how it could be.

Q. It is in the business of what?

A. It was in the business of supplying photographs to magazines, to the best of my knowledge.

Q. To the best of your knowledge it was in the business of supplying photographs to magazines?

A. Yes.

Q. And as such is not a member of the Associated Press?

A. It couldn't be a member of the Associated Press as I know the Associated Press.

Mr. Moscovitz: That is all I have at this time, Mr. Examiner. That is all the questions I have to ask of Mr. Watson. I have some further testimony, witnesses rather, in the same case, but before proceeding further in this case, I would appreciate it if a witness who is going to be used in the representation case might be permitted to take the stand since his testimony will be short and he has got to leave.

(Witness excused.)

Mr. Moscovitz: This will be case II-R-3.

[fol. 325] R. H. HIPPELHEUSER, called as a witness, for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ernst:

Q. What is your address?

A. Jackson Heights, Long Island.

Q. You are an employee of the Associated Press?

A. Yes.

Q. You are here under subpoena?

A. Yes.

Q. How long have you been employed at the Associated Press?

A. Went with them in Chicago in 1930, and I took—I took —after the Convention in 1932, and then I came back to New York City, I think it was either the first of November or the first of October of that same year, and I have been here since.

Q. In general, what kind of work did you do for the Associated Press?

A. In Chicago, more or less, it was general and the first part of my work here was general, but in the last year or so it has been mostly politics, and in addition to that, for the last two and a half years, I have written a weekly review of the news that runs about two thousand or twenty five hundred words that we send out on Friday night for a Sunday morning paper. I think it is used by, oh, seventy five to one hundred Sunday morning papers over the country.

Q. Under your name?

A. Yes.

Q. And what type of story have you handled outside of the state of New York, for example have you gone outside of the state of New York for stories?

A. In June of 1934 I went to Detroit and covered the [fol. 326] National Convention of the Socialist Party. There have been several other out of town assignments, although of a much shorter temporary nature, emergency assignments.

Q. You joined the Guild in November, 1933—early in the year?

A. When it was organized, I think it was at that time.

Q. You have known Morris Watson while you have been in the Associated Press?

A. Since Chicago—I knew him in Chicago.

Q. What is your opinion, and what is the general reputation around the office of the calibre of work he performed for the Associated Press up to the date of his discharge?

A. He was always regarded as a very exception- newspaper man and reporter.

Q. A man of integrity? And Accuracy?

A. To the best of my knowledge and belief.

Q. You never heard directly or indirectly any accusations against his reporting ability?

A. No.

Q. Who was the most accurate and who was the most outstanding person in the Associated Press unit of the News-

paper Guild from the time of its organization until the time of Morris Watson's discharge?

A. Watson.

Q. No question in your mind about that?

A. No question about that.

Q. He was the spokesman for the employees in Press Associations of all types? And in particularly, for the Associated Press?

A. Yes, he was, as I understand it, he organized the Press Association Committee of the Newspaper Guild and had spokesmen for various groups, Guild groups seeking contracts.

Q. Are you an officer of the unit of the Newspaper Guild, [fol. 327] the Associated Press unit?

A. I was elected Chapter Chairman at that same October meeting when they asked for bargaining on the five day week. I succeeded Edward Neal, who is now in Ethiopia.

Q. Do a majority of the editorial employees in the New York office of the Associated Press belong to the Newspaper Guild of New York?

A. Yes.

Q. Does the American Newspaper Guild represent a majority of the employees in the New York office of the Associated Press for the purpose of collective bargaining for the restoration of the five day week?

A. Yes, it does pursuant to that resolution in which we, as an Associated Press unit, authorized them to represent us.

Q. Now, will you refresh your recollection from notes prepared by you and other members of the Guild, and just state in the record in your own language what you mean by editorial employees, and may I suggest——

A. This is a list that we prepared for Mr. Watson's performance the other night of editorial employees so it will do for editorial employees of the Associated Press.

Q. Let's get that clear. You prepared a list in order to invite to Morris Watson's theatrical performance all editorial employees, whether Guild members or not, in the New York office of the Associated Press?

A. Whom we considered editorial employees of the Associated Press.

Q. In conformance with the constitution and by-laws of your organization?

A. Yes.

Q. Will you outline in numerical terms, more or less the [fol. 328] types of people, by such groupings as you make, and set forth the various groups in general terms, discussing in no great detail to belabor the record, the services performed by the various people.

A. Well, I will have to agree on the definition of an editorial employee, and I would say that an editorial employee in the Associated Press was a person who was engaged in the production of news features and photos as differentiated between those people who were engaged in the dissemination of news and features and photos. I think that would be a fair case to cover. That would probably be one or two instances bordering on the frontier where it would call for a decision.

Q. I will take that up with you later. Or do you want to discuss the frontiers first?

A. I think we might as well get rid of this general classification. This classification goes in the city desk employees; employees on the general desk; wire editors, that is the filing editors who hand out the copy, take the copy and edit it, take in schedules over the wire, and in general control the wires that leave the New York Office and come in there. Those are including in the filing editors. That includes the sports' department, the sports' writers, and the sports' desk editors.

Q. That includes the men who go out into the field to report the world series games?

A. Yes.

Q. Also the men who do the writing work in the office?

A. Yes.

Q. Go on.

A. That includes the writers on the cable desk and on what is known as the IND desk which is, as I understand it, operating between New York and south and Latin American [fol. 329] points and Mexico and Cuba. There are writers and editors on those cables and IND desks and that is taken in by these names. It includes the writers, editors and statisticians in the financial department of the Associated Press. It includes all persons on the editorial photo desk, who take charge of the operation, the editorial operation of the wire photo machine of writing captions, of directing the flow of pictures across the country, sending messages to bureaus and ordering pictures in. It would take charge of those.

Q. It does not include any of the people who are engaged solely in the mechanical operation of the transmission?

A. No, no.

Q. It includes those people who are not only in the cable library but also in the photo library, because the taking care of cable news and of pictures is a very valuable part of servicing news and pictures. It includes the production department. I think they call it the production department of the photo service. Until recently, to the best of my understanding, the production department was under the editorial side of the Associated Press, but I understand it has been changed over now to where it is under the traffic side.

Q. Let me interrupt a moment,—you are talking of terminology used by the Associated Press itself?

A. Yes.

Q. As I understand it you are not positive, but the talk around the office is that there has been some shifting between traffic and news?

A. People in those departments have told me that.

Q. Told you they have been shifted in the records of the [fol. 330] Associated Press from news to traffic?

A. Yes.

Q. Or from traffic to news?

A. Yes.

Q. But that does not determine the Guild's method of denominating function?

A. They have been eligible for Guild membership from the start, and to us they are still editorial employees.

Q. And if the wire editors are classified by the Associated Press as traffic men, they would still be eligible?

A. They would still be editorial men. In that production department, you have photo printers and photographers and dark room assistants who help develop the films. Then in the feature service, there are artists and writers, people who prepare the feature pages. Some of them write columns, some of them write news, it goes out on the feature pages. Some of them are artists that do comic strips or cartoon work for serials. That is the general nature of the work. There is a science editor, a radio editor, biographical editor, various classifications of editorial and artists in the feature service. I think that covers all the classifications.

Q. Now, when you are talking about these people in classifications——

A. Oh, I have another classification here of people who run the ship news department, who keep track of the incoming and outgoing passenger ships, and who prepare schedules for the city desk of persons who are arriving, so the city editor can make assignments to go down the Bay and meet them.

Q. In all these classifications you have addressed yourself only to employees in the New York office?

A. Yes.

[fol. 331] Q. Now, the total number of such editorial employees, classified within these frontiers, is what?

A. A hundred and sixty one.

Q. Now, may I ask you to discuss one or two groupings possibly.

A. Out of that one hundred and sixty one I have four names here of people who are in the editorial department but who are heads of departments, so they wouldn't hardly be classified as editorial employees, I don't suppose. They are editorial executives. So, taking four from a hundred and sixty one, a hundred and fifty seven names.

Q. It is a fact that under the constitution and by-laws of the Guild, these people have the power to hire and fire, may or not be qualified to join the Guild?

A. It is up to the Guild, as I understand it.

Q. To determine on the basis of where the man really sits, whether it is on the workers' side or the bosses', is that the basis, whether his hiring and firing would make him an appropriate member, is at the discretion of the Guild?

A. I suppose so.

Q. Now, without giving any names, or break down whatsoever, will you state the number of members of the Associated Press unit of the Newspaper Guild of New York City?

A. There are not quite as many as there were, but it has picked up.

Q. What do you mean there are not quite as many as there were?

A. As of today there are eighty seven members of the New York office of the Associated Press who are members of the Newspaper Guild, counting Morris Watson.

[fol. 332] Q. What do you mean when you said you cannot tell, there are not as many, explain that?

A. Well, as Mr. Watson said, when he testified, right after he was discharged there were several people who sent in resignations that didn't come to talk to me and several came and told me they were resigning.

Q. Why did they tell you they were resigning?

A. I only know a few instances, that the City editor had asked them to get out.

Q. Who was the city editor?

A. At that time it was Homer McCoy.

Q. How do you know that he asked them?

A. They told me he did.

Q. Where is the city editor now?

A. He asked to be transferred to California and he is in Los Angeles.

Q. Now, when you gave the number of Guild members, that is as of what date?

A. That is, when you subpoenaed me, I telephoned the Guild office and asked them for the list of members.

Q. The latest list?

A. The latest list.

Q. What was the membership around December, at the time when the demand was made—was it in excess of eighty seven?

A. Yes, I think the membership of the Associated Press Guild was ninty five *and* ninety six. I think that was the highest it ever was.

Q. And during the period of October, through December, the membership never fell below its present eighty seven? It was either ninety one or ninety two around that time?

A. I think it probably got down to around eighty five [fol. 333] because within the last two weeks there have been three people, I think, who joined.

Q. Now had there been efforts even recently to persuade people from staying in the Guild, or were any efforts of the Associated Press so construed by any of the members, and what kind of efforts were made?

A. As I say, all I know is about the incident of the two people who came to me and told me of the McCoy incident, and McCoy himself came up to me and told me that he was leaving the Guild. He said he had not paid dues for some time and he was leaving the Guild and I asked him why and he said he was tired of it and anyhow he was going to

be city editor and wouldn't be eligible to belong any more, but city editors are eligible to belong under the by-laws of the Guild.

Q. Now, in addition to the present members of the Guild have you any evidence that will help the Examiner as to the feeling of the non-Guild members of the Associated Press unit in New York, as to their desire to have the Guild represent them in regard to the restoration of the five day week, for example?

A. There would be no question of any kind, that if there was an election in the Associated Press, that a great majority would be registered to have the Guild represent them.

Q. You are in perfectly good standing up to now at the Associated Press in your employment?

A. I suppose so.

Q. Under no charges or complaints or anything?

A. I must say that there has never been any step directed against me of any kind.

Q. There are no uncomfortable relationships whatsoever?

A. No.

[fol. 334] Q. You are just testifying under subpoena as to facts you know?

A. Yes.

Q. The Associated Press has disputed the fact that the Guild does represent a majority for representation for the restoration of the five day week? Is that right?

A. Yes. Mrs. Herrick asked me to come down to her office once. I went down there and she had a list of names that had been handed to her and I think on that list of names were people like stenographers that would never be classified as editorial employees.

Q. But they did dispute?

A. Yes.

Q. They took the position that in their opinion there was not a majority, right?

A. Yes.

Mr. Ernst: That is all.

Mr. Moscovitz: At this time, Mr. Examiner, we would like to proceed with the witnesses in the Morris Watson case, which is the case designated as II-C-28.

Trial Examiner Clark: I take it this is a joint hearing and I can consider both as one.

Mr. Moscovitz: We stated at the outset that this is a joint hearing and all the witnesses may be considered as though in one case.

Trial Examiner Clark: We will take a short recess.

Recess.

Mr. Moscovitz: Mr. Examiner, there will be found in the certification of case 2-C-28 notice to produce which was [fol. 335] served upon the firm of Davis Polk Wardwell Gardiner and Reed to produce the employment file and records and other records pertaining to the employment and discharge of the Associated Press of Morris Watson. I would like to ask at this time whether those records have been produced.

Mr. Kelly: No, they have not.

Mr. Moscovitz: At this time I must secure secondary evidence of the contents thereof by calling as witness, Mrs. Herrick.

Elinore M. Herrick witness for the Respondent was called to the witness stand, and after being duly sworn testified as follows:

Direct examination.

By Mr. Moscovitz:

Q. Where do you live, Mrs. Herrick?

A. New York City.

Q. What is your address?

A. Eight west Thirteenth Street.

Q. What is your official position?

A. Regional Director of the National Labor Relations Board, Region Two.

Q. Did you have submitted to you on a certain date a charge in the matter of Morris Watson?

A. I did.

Q. The proceeding which is now going on?

A. Yes.

Q. And did you make an investigation of that charge before the issuance of complaint?

A. I did.

[fol. 336] Q. During the course of your investigation did you communicate with the Respondent, the Associated Press?

A. I did.

Q. Did you make an effort during your investigation to secure all of the facts in the case so that you would be in a position to determine whether or not complaints should be issued?

A. I did.

Q. During the course of your investigation did you discuss the case with a representative or representatives of the Associated Press?

A. Yes.

Q. And do you recall with whom you had this conference?

A. Yes.

Q. Who was it?

A. Mr. Stratton, and there was present at one conference Mr. W. C. Cannon.

Q. Do you recall when this conference took place—the first one?

A. I don't recall the exact day.

Q. Some time between the filing of the charge and the issuance of the complaint.

A. Yes.

Q. Both conferences took place in this period.

A. I would say in November.

Q. November, 1935?

A. Yes.

Q. And during the course of these conferences did you have opportunity to see the records of the Associated Press on Morris Watson?

A. Yes.

Q. And were the records produced for you?

A. Yes.

Q. By whom?

A. Mr. Stratton.

Q. Was that at your request?

A. Yes.

Q. And did he give you an opportunity to go through the record?

A. Yes.

Q. In his presence?

A. Yes.

Q. And did you in his presence makes notes on the contents of that file?

A. I did.

[fol. 337] Q. Was it the official employment personnel file of Morris Watson?

A. I understood it was the sort of general file that is kept on every employee into which go various office memoranda relating to their employment, changes in rates of pay, correspondence with respect to an employee as between the office force and the executives, and as between outsiders and the Associated Press.

Q. Were these notes taken in the presence of Mr. Stratton?

A. Yes.

Q. Did he know that you were taking the notes?

A. I showed them to him. I don't know that he could read them but I showed them to him.

Q. Would you be good enough to state for the record what notes you made on the personnel file of Morris Watson?

A. I made rather full notes, after first going through it to see how far the record of the employer sustained the story that had been told me by Mr. Watson, and then I made specific notes on certain types of documents that were in that file. For instance, I made a note as of December third, 1928, that being the date on the document in the file when Mr. Honce hired Morris Watson, and recommended him. He was hired as a temporary employee, and at the same time Mr. Honce recommended him apparently for a regular position.

Then on December twentieth, 1928 Mr. Honce recommended Watson for special legislative reporting, and that recommendation was approved by Mr. Cooper on December 28th, 1928.

Under date of February 25, 1928 Watson was recommended by the News Editor for the position of Night City [fol. 338] Printer Editor, and that recommendation was approved on March third, 1928.

Do you want me to go through this?

Q. I wish you would just as you are.

A. On April third, 1929 the record shows that Watson was transferred from City Printing Editor to a day reporter, same salary, approved April fifth.

June third, 1929 Mr. Honce recommended Watson for a raise with a complimentary letter. That is, it seemed so to me. And enclosing a clipping of one of Watson's stories.

On June 27th, 1929 there was some discussion and correspondence as to health insurance, etc.

June 29th, 1929 Honce wrote a most complimentary letter—again my word. But this is a quotation form of memoranda: "Star reporter, is one of the main stays of our reportorial staff."

June third, 1929 Honce recommended him for an increase in salary.

July 5th, 1929 Honce wrote Cooper that Watson covering the Harding Case on the Chicago post had withdrawn the reporter and was using Watson's stuff verbatim.

September 20th, 1929 Honce sent the Chief of Foreign Service, a feature story by Watson which according to the memoranda was well received.

November 23, 1929 Watson asked for a transfer to New York, and at the same time Honce wrote to the New York office saying—I quote from the memoranda, "Watson is a first class reporter," and more of that.

November 25th, 1929 there was an unsigned memoranda which gave the rating of a number of men in the Chicago [fol. 339] office, apparently a regular procedure, and I simply picked out Watson's name from among that, and this is what it said: "Watson—Day Local Reporter been with Associated Press about a year and delivered the goods on some of the most important and difficult assignments; initiative in digging up feature stories."

March 21st, 1930 memoranda from Honce to Mr. Cooper, "Watson's work has been exceptional."

April 17th, 1930 Honce to Cooper, about a beat on all papers that Watson had scored.

September 6th, 1930, the Chicago Bar Association apparently wrote a letter which was in this file ~~com~~complimenting Watson on his coverage of some case in Chicago—some trial. I don't remember the exact instant.

Then on October fourth, 1930 Watson's transfer to New York was approved. But on October 17th the Chicago

office asked that Watson be kept there until after the election.

December 29th, 1930 he received a salary increase of $30 a month.

April 23rd, 1931 he was assigned to the Havana wire in the New York office.

September 16th, 1931 he was assigned to Boole Place on local financial trick or shift.

On December 12th, 1931 a letter came in from Omaha, Nebraska and some other papers complimenting Associated Press on Watson's handling of a particular story.

April 28th, 1932 his salary was reduced, I have a memoranda here that I asked Mr. Stratton about that and Mr. Stratton said, it was a depression cut, we all got them at that time.

[fol. 340] January 9th, 1933, memoranda saying, I quote from the memoranda: "Watson turned out quite a number of good features, but there were a few that were not quite so good."

March 22, 1933 again one of these general reports rating all employees in the office, opposite Watson's name appeared, "Watson—day local staff. Watson good all round assignment man. Can do very credible work on any type of assignment and subject."

Under date of July 8th, 1933, again I apparently quoted direct from the memoranda in the file, "Watson scored notably in an excellent re-write of Mallison take-off today."

That was an inter-office communication from some of the executives about his work.

Then on the date of September 20th, 1933, memoranda signed, "C. E. H." which upon inquiry I find referred to Mr. Honce written to Mr. Kent Cooper, "Watson going to Washington for newspaper hearing. Understand he represents only the Guild Committee and not the Associated Press."

October 13th, 1933 memoranda from which I took the quotation, "Watson scored another beat on Davis verdict."

November 27th, 1933, I have made a note of another compliment for Watson in the file. I don't know what it was.

Then the next item in the file was a copy of a proposed code which was signed by Watson who had himself sent the copy of the code to Mr. Cooper. Then there was a News Guild release with Watson's name as it appeared on

that release marked in pencil. On February 1st, 1934 [fol. 341] Watson asked for an assignment to the following service. March 26th, 1934, under that date there was a copy of Watson's open letter to the NRA, and a letter to Mr. Honce from some Associated Press man. And underscored in the Watson letter was the remark, "We are prepared to show there are labor abuses," etc. Whatever the context is I have not the full thing here. But the memoranda from this Associated Press man calls attention to this sentence and says, "Please ascertain if Watson as an employee of the Associated Press refers in the statement to Associated Press, ask him if he knows any real or fancy labor disputes involving employees of Associated Press that have not been submitted to the management."

March 27th, the next day there was a very extensive memoranda from Mr. Honce to someone of Mr. Honce's superiors in the organization, I take it, going over his questioning of Mr. Watson about the attack on the Associated Press in the Editor and Publisher. That is the only note I made of that particular item.

Then there was in the file a copy of the Guild ballot at the time they ascertained whether the man wanted the Guild to represent them for collective bargaining. I imagine that is the ballot referred to this afternoon.

There was also in the file the report of a Guild meeting which was held at Mark Barron's home purported to be the minutes of the meeting, states who was present, what was done and said.

I have a note here that I asked Mr. Stratton how it [fol. 342] happened that was in the file and he said the copy so far as he knew was left on Mr. Cooper's desk, and that is how they came in possession of it.

On August 14th, 1934 someone outside the Associated Press Organization wrote a letter complimenting Watson on the publishing of some story.

February, 1935 the file contains a notation that Watson did a re-write on the Hauptmann Trial.

June 4th, 1935, somebody named Shoemaker sent Stratton a copy of the NRA committee report to the Guild Convention which was signed by Watson. That was simply filed in the file.

I have made a note here in view of the fact Mr. Watson had said to me that he though- possibly his having been

the spokesman in connection with collective bargaining at the Brooklyn Daily Eagle on July 4th, that I noted that there was no mention of that incident contained in the file. It apparently was not a matter of official record so far as the Associated Press was concerned. No indication that they knew anything about it or were concerned with it.

On July 5th, 1935 a note that Mr. Watson has been transferred to Early.

October 7th, 1935 Mr. Coop, Watson's supervisor wrote—I quote from that memoranda, "Follows instructions but has shown no initiative." That was contained in the report from Mr. Cooper, from Mr. "Coop". The report was in the case he was then removed from Early. On the same date there was a memoranda from Mr. Kendrick, "Have not been able to use him on any big assignments."

On October 18th, 1935 the memoranda from Mr. Kendrick [fol. 343] to Mr. Kent Cooper, memoranda containing five reasons for discharge of Watson which Kendrick definitely recommended, and the second recommendation I wrote down exactly as it appeared on that memoranda. I quote from it: "He is an agitator and disturbs the morale of the staff at a time when we need especially their loyalty and best performance."

On top of this memoranda in pencil handwriting signed with initials that looked like "K. C." is a notation and I quote: "But solely on grounds of his work not being on a basis for which he has shown capability."

I made a note for myself that the "But" was heavily written in pencil and the "solely" was underlined.

(Witness dismissed.)

Mr. Moscovitz: Mr. Watson, will you take the stand for a second.

Mr. Morris Watson was recalled to the witness stand.

Direct examination.

By Mr. Moscovitz:

Q. In Mrs. Herrick's testimony there is a reference made to a report of a Guild meeting held in Mark Barron's home

and that report is contained in your file. Who is Mark Barron?

A. He was at that time in the feature service. The only way I could identify him would be that he was dramatic critic.

[fol. 344] Q. Was he an editorial employee?

A. An editorial employee, yes, and a member of the Guild.

Q. Do you know why a report of the Guild meeting held in his home should be in your file?

A. I don't know why it should be. Unless——

Q. Can you think of any special reason?

A. I can think of no special reason.

Q. Do you know how many people were present at that meeting?

A. Sixteen or seventeen.

Q. That is all.

(Witness dismissed.)

COLLOQUY

Mr. Moscovitz: Mr. Examiner, there was submitted by the firm representing the respondent here an affidavit by Jackson S. Elliott in support of an application for preliminary injunction before Judge Bondy recently. The affidavit contains certain statements which I would like to introduce at this time. However, most of the facts contained in the affidavit have already been introduced, so I see no reason for cluttering the record. I am particularly pointing at this time to the paragraph starting on Page 3 and ending on Page 4 of the affidavit, and I will introduce the affidavit for that part of it.

I will at this time have it marked Exhibit No. 22 in evidence. I submit it.

Trial Examiner Clark: Admitted.

(The affidavit referred to was received and marked in evidence Exhibit 22.)

[fol. 345] Mr. Moscovitz: May we have a one or two minute recess at this time.

Trial Examiner Clark: A short recess.

(Thereupon a five minute recess was had, until four o'clock.)

Mr. Moscovitz: Mr. Examiner, Mr. Stratton has produced in answer to our request the statement in writing that the number of employees in the Associated Press, but it is done in a manner which if it is agreeable to both counsel for Government and for the Guild the statement is, "The number of employees of the Associated Press is more that 1700, and the annual payroll is in excess of $3,000,000. The number of employees of the Associated Press in the New York City office, exclusive of general office executives is more than 350, and the annual payroll for such employees is in excess of $800,000."

I will introduce this statement at this time as Board's Exhibit 23.

Mr. Examiner, Mr. Stratton has also produced in response to our request the balance sheet of the Associated Press which shows a total asset balance of 1935 of $2,679,-128.80. An exhibit showing the income of the Associated Press statement of income and expense for 1935, and statement of income and disbursements for 1935, marked Board Exhibit No. 23-A, Board Exhibit No. 23-B and Board Exhibit No. 23-C. I offer these exhibits at this time.

[fol. 346] Trial Examiner Clark: Admitted.

(The exhibits referred to were received in evidence and marked B-23, B-23a, B-23b, B-23c.)

Mr. Ernst: Mr. Examiner, please as secondary evidence, in view of the withdrawal of the only witness supplied by the Associated Press I would like to read into the record from a book entitled, "History of Cooperative News Gathering in the United States by Victor Rosewater." It is the classic upon the general subject published by D. Appleton and Company, New York and London, 1930, bearing on the title page as author Victor Rosewater, formerly editor of the Omaha Bee. I call to your attention that in the names of the papers members of the Associated Press you will be able to tie up this former editor of the Omaha Bee with the Associated Press.

Trial Examiner Clark: What is the name of the book again?

Mr. Ernst: History of Cooperative News Gathering in the United States.

I shall only read one or two short passages which go to the questions which I asked this morning and which you indicated were relevant. On Page 300 at the top of the page in a chapter entitled "Questions of Monopoly." I am now reading from the book: "With the bonds originally [fol. 347] aggregating $130,000 there are holders representing principally the bigger papers in the larger cities could cast 5200 votes in addition to their own individual votes, out of a possible total approximately 6,000. With the eventual reduction of the outstanding bonds by merger, mishap or extinction to $100,000, and the increase of membership to 1250, the bond holders still might mass more than 4,000 votes, and together could outweigh all others by four to one. The distribution of voting strength effecting none but the members determining the degree of democracy within the association. But with this notable exception that it also determines ultimately the attitude to newspapers voluntarily or involuntarily outside the fold. The protest might on the other hand more directly concern the outsider, placing in those papers possessing it an almost absolute power of exclusion."

I might say that I am reading from the second page of the Paragraph, and that the paragraph relates to the Associated Press. Because the opening sentence of the entire chapter starts in with the statement, "The accusation most obstinately pursuing the Associated Press has been the gigantic news monopoly, immunizing members against competition, even while ruling them with a high hand."

There is no clear reference of this page in the book as to [fol. 348] just when the voting strength was four to one in accordance with the paragraph that I have read. But I would like to read from another page which is No. 308, the following quotation: "So thirty-seven per cent of the membership paying over $100 a week were contributing three-fourths of all of the revenue. The sixty-one paying more than $500 a week apiece were providing $46,211. While sixty-one paying less than $15 a week were producing $768,000. To co-relate the voting power more equitably the recommendation called for a resolution of the members, demanding redistribution along these lines."

One other quote from the same page, 308. "Each $25 bond would entitle to one vote. But every member regardless of the amount of his assessment should have the right

to subscribe for four bonds in pro-rata editions above $50 a week."

I would like to read on the question of the number of employees on Page 337, where the author says, "Associated Press receipts and expenditures have come to exceed eight million dollars a year, and the employees count up to some two thousand."

Mr. Examiner, please, I would like to put into the record as briefly as possible evidence directed to show what would happen to the newspapers of the country, and particularly the newspapers of the Associated Press if there were a break-down of the service, whether due to strike or other- [fol. 349] wise. I can produce the witness who went out and bought these papers yesterday if you think it advisable. The only testimony he would give which might belabor the records would show we did not select particular days of the newspapers. I think it will be sufficient if I make the statement. I instructed a man to go out yesterday afternoon and buy from the foreign newsstand on Forty-second Street indiscriminately newspapers on sale yesterday published outside of New York, where such newspapers from the obvious appearance of the front page belong to the Associated Press and carried Associated Press news. I will do this as quickly as possible. I think it is important because it will show the effect against which the Wagner Labor Act in part was aimed.

Trial Examiner Clark: I suggest could you not refer specifically to a few and the rest of them generally. I would think the evidence is a kind that we ought to all appreciate, just make definite in the record what we all must note.

Mr. Ernst: I was hoping Mr. Stratton would look at them and summarize what was Associated Press news.

Trial Examiner Clark: I suggest you refer to a few samples and we will admit the rest.

Mr. Ernst: I did not want to introduce any of them in evidence. I thought if I merely said Dayton Daily News, [fol. 350] Monday April sixth, 1935 carries on the front page nineteen stories, and one photograph credited to the Associated Press.

The San Francisco Chronicle published in San Francisco, California, Thursday, April 2nd, 1936, containing on the front page nine stories credited to the Associated Press.

The Portland Evening Express, published at Portland Maine, April 6, 1936 carrying on the front page, the leading photograph credited to the Associated Press Wire Photo, and eight stories.

Arizona Republic, published at Phoenix, Arizona, April 4th, 1936 carrying eleven items, stories credited to the Associated Press.

Commercial Appeal published at Memphis, Tennessee, April 4th, 1936, carrying on the front page twenty-seven stories credited to the Associated Press.

Trial Examiner Clark: There would be a lot of inside stories too?

Mr. Ernst: Yes. Possibly for the purpose of the record it might be more satisfactory to put somebody on the stand who would look at them and testify there were a lot of inside stories in addition. I thought it was plenty, however, to indicate the complete desiccation of the front page in case these Associated Press stories did not arrive throughout the country.

Trial Examiner Clark: Go ahead.

Mr. Ernst: May I ask your instructions as to whether [fol. 351] you desire to have the four or five papers introduced in evidence which may encumber the record in case it ever gets into court, marked for evidence, for identification, or whether it would be more convenient to have somebody testify as to the papers.

Trial Examiner Clark: I wonder if it would not be possible to have you or Mr. Moscovitz make a list of the stories and file later on and council certify that is accurate. I should think it could be accepted for a purpose. Instead of stopping now. Just a statement in written form that we can admit later.

Mr. Ernst: I am fearful without a stipulation from the Associated Press Counsel.

Trial Examiner Clark: They are not represented now.

Mr. Ernst: Then I would imagine the documents themselves would not be in the record on appeal and we would meet with the objection of not having installed this mass of papers which would have to be reprinted in the record. What do you suggest?

Mr. Moscovitz: I would suggest we just call a witness and go through them very rapidly.

[fol. 352] MR. CARL RANDAU was called as a witness and, after being duly sworn, testified, as follows:

Direct examination.

By Mr. Ernst:

Q. What is your name?

A. Carl Randau.

Q. Your address?

A. One Sheridan Square, New York City.

Q. Are you here under subpœna?

A. I came voluntarily. I work on the World Telegram, and we have a five day week. This is my day off.

Q. How long have you been engaged in newspaper work?

A. Since 1919.

Q. How long have you been on the Telegram?

A. Since 1927.

Q. You are a member of the American Newspaper Guild?

A. I am.

Q. When did you join?

A. When it was formed in the Fall of 1933.

Q. You have been an active member in the American Newspaper Guild?

A. Yes.

Q. What positions have you held in the organization?

A. I have been a member of a representative assembly that we have in the New York Guild, and I am President of the New York Guild.

Q. And as President of the New York Guild you have at times attended meetings of the Associated Press unit?

A. I have.

Q. And you are generally familiar with the organization of the newspaper units of the American Newspaper Guild?

A. Yes.

Q. Will you in the first place, state or read the objects and purposes of the American Newspaper Guild. You can [fol. 353] read them from the Constitution.

A. The purposes of the Guild are most simply stated, if I read just one paragraph here from the Guild's Constitution:

"The purposes of the Guild shall be, (1) to advance the economic well being of its members; (2) to protect their

rights by collective action; (3) to foster friendly cooperation with all other workers; (4) to promote industrial unionism in the newspaper industry; (5) to raise the standards of journalism by promoting accuracy, thoroughness and impartiality in reporting, writing and editing news, and in supplying photographic or graphic illustrations for news articles."

Q. Just very briefly state the organization of the American Newspaper Guild in its relation to New York, and to the Associated Press unit.

A. In the late summer of 1933 after there had been pay cuts on papers throughout the country and in other organizations connected with newspaper editorial departments there was the feeling that something ought to be done about it, but individuals could do nothing, and also there was impetus to this because of the number of employees in editorial departments was being reduced, and it was difficult to get jobs once turned out. There was a time when a newspaper man losing a job in one paper could go across the street and get another job. There are fewer papers and less pay. So efforts were made to do something that would correct this situation. That was the background that [fol. 354] caused the Guild to be thought of.

Q. A good many of the other workers in the newspapers, the mechanical departments, so to speak, were organized in unions?

A. All the mechanical workers on most papers were organized.

Q. And they had contracts with the employers?

A. They did.

Q. Did they suffer wage cuts to the same degree as the editorial workers that were not organized?

A. Some of them had wage cuts, but less drastic wage cuts.

Q. Not as often?

A. Not as often; they were under contract.

Q. Are you familiar in rough terms of the average weekly wage of newspaper men in the United States?

A. The statistics on that are far from complete. We do know from such a survey that could be made that they are very low. They are lower than the mechanical departments, and that at one time it was summarized that it took a newspaper man twenty years to grow to the position where he

obtained a pay of forty dollars a week. That is taking the country by and large. There is no accurate, complete statistics on this.

Q. Another motive back of it related to the folding up of newspapers without notice to employees—is that one of the worries in newspapers men's mind?

A. I should say the sale of the World with the turning into the street a large number of employees with very short severance notice, or none, was a great impetus to steps in their behalf, or by themselves on their behalf.

[fol. 355] Q. About how many members are there in the New York Newspaper Guild, approximately?

A. There are some 2300, but some are not employed and consequently non-dues paying. There are some 1500 in good standing. That means their dues are paid up to within a period of sixty days. They are drastic on trying to keep dues paid up.

Q. What is the relationship between a local unit and collective bargaining with the boss?

A. I would say first that the New York Guild is a part of the National Guild. The New York Guild in turn is made up of units on each of the papers. And the moves for collective bargaining come from the smallest bodies, that is the unit on the paper. Some units have been active and have been sufficiently active to get contracts. Some have been relatively inactive. But the impetus comes from the union.

Q. For example, isn't there a contract with the New York Evening Post?

A. There is.

Q. The New York Evening Post is a member of the Associated Press?

A. It is.

Q. That contract ran for a definite length of time?

A. It has been in existence some nine months.

Q. And it provided provisions as to vacations and discharge notice that could not be pre-emptory severance, wages, hours, and other factors?

A. It did not cover minimum wages; it covered the other points you mention.

Q. What has been the policy of the American Newspapers Guild and the New York Newspaper Guild in regard to endeavors to negotiate agreements?

A. Efforts have been made in many cases to obtain agreements which would correct, what even the employers have [fol. 356] admitted were abuses. In each case it has been an instance of the employees—let me say, going almost hat in hand, seeking some improvement in conditions and being very conciliatory in their efforts to obtain improvements. In other words, it was always on the basis of we want to talk about better conditions, and in some instances the employees if there was an indication on the part of the employer that he did not want to talk, really think it over again before they pressed their point. There has been a tendency toward extreme conciliation.

Q. In other words, there was not yet a real equality of bargaining power.

A. There are very few instances there is sufficient strength on the part of the Guild to go in on equal terms with the employer.

Q. What is that due to, a fear of reprisal or discharges?

A. In many instances a fear of reprisals; many instances it is the ability of the employer by singling out individuals that have taken an active part to lessen their interest in collective bargaining by giving them individual raises. That has happened in a number of instances.

Q. Do you know whether that happened at the Associated Press since the Watson discharge?

A. I would not be able to say specifically. I indirectly know that there have been some individual raises. Whether it was for a specific purpose would be mere guess work.

Q. Now, in regard to reprisals, what is the attitude of the Guild? For example, what happened in the case of Dean Jennings when Hurst fired him. Just tell in a few [fol. 357] words what the Guild policy is.

A. The Guild made an effort to obtain his reinstatement and had great reliance on Section 7-A, and under Section 7-A pressed that case through to the Labor Board in Washington and obtained a favorable decision on it, only to have the decision revoked.

Q. That is the decision of the Labor Board in Washington was to reinstate Jennings?

A. Was that Jennings had been discharged for Guild activities.

Q. Then there was a re-hearing on it, right?

A. There was.

Q. And the Board stuck by its decision?

A. The Board reaffirmed its decision, yes.

Q. But Jennings was never reinstated?

A. He was not reinstated because it was then decided that Section 7-A did not apply to newspaper editorial employees.

Q. What has been your policy in a case under the Newspaper Board. Take for example the Tonietta Case where the Newspaper Guild felt he had been discharged because of Guild activities.

A. He worked on the Il Progreso, an Italian language paper here and was discharged for Guild activity, and took the case before the Newspaper Board and found he had, and ordered his reinstatement. He was reinstated, or continued in the employ of the Progreso publisher for a certain length of time.

Q. Now, your general policy you testified is to endeavor to negotiate where possible, and secondarily, where you can't negotiate a grievance you go to a public forum?

A. We have done both.

[fol. 358] Q. Now, where both those avenues are closed to you, and you can't get word back from the employer as to what he will do or where he can't see you, then at times you have had to resort to the only means left, a strike. Can you tell using one or two examples of the policy of the Guild on the picket line.

A. There have been several things. We have had picket lines without a strike, and we have had picket lines with strike. In the first instances, in the Long Island Press and the Staten Island Advance there were picket lines set up because individuals were discharged for Guild activity. In other words, we felt they had been discharged for Guild activity and pressed our point. In the case of the Long Island Press we obtained after a picket line of a few days reinstatement of eight employees who were out. In the case of the Staten Island Advance only one person was discharged, no other employees in that office felt they could risk their jobs by showing sympathy for him and that was not a success. He was not reinstated.

Subsequent to that, very shortly after the Staten Island Advance trouble eight men were discharged from the Newark Ledger. And there was the statement made that if the publisher heard any more of this foolishness—this foolish-

ness being the effort of the Guild to obtain collective action, eight more persons would be discharged, and if any more foolishness were heard there would be additional discharges. A unit meeting was then held and voted to strike, and did go on strike. Remained on strike for about four and a half months, at which time the paper went into re-
[fol. 359] ceivership, or went into the hands of trustees. And while in this trusteeship a settlement was made with the Guild whereby the strikers went back to work.

Q. Was there an interruption of the publication of this Newark paper?

A. Two days the paper did not come out. I think on the second day some issues came out. There was an interruption either for the entire period of two days, or the greater part of two days.

Q. In case this paper were a member of the Associated Press——

A. It is a member of the Associated Press.

Q. You know that?

A. Yes.

Q. Then the Associated Press because of the strike over there must have suffered whether greatly or not in the flowing in of news from the Newark paper, in accordance with its membership commitment?

A. Yes, I would say so. The Associated Press depends on the Newark Ledger for coverage in Newark between five in the evening and two in the morning. The Ledger is the only morning paper in Newark and the way the Associated Press covers that as naturally the press association covers other places, is to get duplicates of the stories that are written by the Ledger reporters and on these days when the paper was suspended, the amount of duplicate copy, even if it existed was small and would only have been turned in for a matter of record. During the strike, even when the paper was under suspension, the number of places covered by the staff, by the strike-breaking staff was smaller than during the normal period.

Q. Now would you refer just for a moment to the situa-
[fol. 360] tion in the Amsterdam News?

A. That was the only other strike in the New York area. That is a small paper, a small Negro Paper in Harlem. There too the attitude of the management was that it would not negotiate with the employees and a number of them

were locked out. Whereupon the majority of the staff voted for a strike, went on strike, remained on strike for about six weeks. There too in this case the paper actually went into receivership. A settlement was made with the purchaser who bought the paper out of receivership and it is now a Guild newspaper. The strikers all went back to work and are now working under contract.

Q. A contract between the Guild——

A. Between the Guild and the Amsterdam News.

Q. Possibly a comment on another kind of a situation so as to get clear the policy of the Guild in negotiation wherever possible you might refer to the Hurst situation in Milwaukee.

A. We now have a strike in Milwaukee where the Hearst management of the Wisconsin news refused to recognize the Guild. The shifts in employment have been so frequent, the salaries so low, that the Guild employees there wanted some assurance of their security and wanted better pay, and sought to get it through collective action, and when the management refused to negotiate with them a strike was declared, but only after every effort had been made to obtain an agreement through negotiation. During the course of the strike, or in the early weeks of the strike, constant efforts were made to contact the management, and [fol. 361] some meetings were held. There was always a readiness on the part of the unit to be conciliatory, and it sought by every means possible, every peaceable means to obtain recognition. It felt that only through formal recognition would any agreement amount to anything. That agreement has not been reached today.

Q. Would you mention something about the policy of the Guild toward the raising of the standards of reporting, the integrity of the news, what the Guild's attitude is.

A. The Guild has a very sincere interest in promoting accuracy and honesty. It feels if reporters can be honest the high sounding organizations for promotion of ethics will take care of themselves. It has not termed itself an organization interested only in ethics, but actually it is sincerely interested in promoting honesty in the news and feels that there can be some definite headway made along this line if men are free to write accurately and honestly and in proportion to the way that they would allocate the happenings rather than that they be allocated to suit some ulterior purpose.

Q. You have Guild units in practically every large city in the United States?

A. In not all the cities. In some of the cities the Guild is very weak. In Chicago notoriously there has been the feeling that it probably would be unhealthy. That is the interpretation placed on it by some of the Chicago newspaper men. It was not a healthy place for an organization. New York, Chicago, San Francisco, Cleveland, Philadelphia, Minneapolis, and Philadelphia—those are a few of the cities in which the Guild is relatively well organized.

[fol. 362] Q. Do you have units in seventy or ninety papers?

A. The exact figures—I am not an officer of the National Guild. It is between sixty and seventy cities.

Q. Just say a word about the type of people who are members of the Newspaper Guild, their background, high school training, college training, schools of journalism. Just the type of people.

A. We have cub reporters who are office boys, and we have people who have gone through grammar school, and we have Walter Lippmann.

Q. Going up or down?

A. It covers the entire range of people working in editorial departments. We have college graduates. Lippmann is. We have Heywood Broun—he did not graduate.

Q. You have known Morris Watson for some years?

A. I met Morris Watson when the Guild was formed. I met him in committee meetings the first months of its formation.

Q. You followed his activities in endeavors to get a code for workers in the press associations?

A. He was in the very beginning one of the active men in the formation of the Guild here and took a particular interest naturally—at least I felt it was natural, in getting the benefits for press association employees.

Q. Is it a fair statement that he was the recognized outstanding spokesman for the workers on press associations?

A. That is not only my opinion, that has been the opinion of many others, and at the last Guild convention he was elected Vice-President for wire services almost by acclamation.

Q. As far as you know, by reputation, and you have seen [fol. 363] his work, he is a competent, able, conscientious reporter?

A. In fact even before I met him I had heard of him and knew of him from Associated Press men who handled a lot of important stories, stories which I had seen come into our office.

Q. You read from time to time the papers from many other cities. I just want to ask you if it is a fact that the bulk of the European news would not appear in papers of the United States that belong to the Associated Press in the event that a strike were called by the editorial workers at the New York office of the Associated Press?

A. The paper would have to avail itself of some other means of coverage. If a paper was dependent only on the Associated Press for its news it would then be hampered greatly if the flow of the Associated Press were cut off. The papers taking one or more press services would be less seriously hampered, but it would be hampered. The rivals of the Associated Press might quarrel with that statement.

Q. Just one other question, Mr. Randau. In the flow of the news through a press association, you have a perishable article haven't you?

A. It is so regarded, yes.

Q. Is it in fact true that if a story comes in you can't wait to get it out or sell it for two days as you can with a table or typewriter?

A. It has to be printed at once.

Q. So that flow in and out of the press association must be continuous?

A. Yes.

Q. You can't keep things on ice?

A. That is right.

[fol. 364] Q. And so if the editorial workers on the Associated Press were to strike with only such notice for example, as the Associated Press gave the workers when they went back to the six day week, which was no notice, there would be an interruption in the service flowing out, but the newspapers members of the Associated Press have to come out every day just the same?

A. They do and we have the feeling based on experience through the interruption of a newspapers coverage of news, and consequently being hampered, that the press association would be hampered in the same way and would in turn hamper the papers that it served.

Q. Mr. Randau, for how many years were you with the United Press Association?

A. I worked for the United Press Association about a year.

Q. In what capacity?

A. I worked for the United Press for a brief time in Paris and subsequently in New York. The year covered that period. That was fifteen or sixteen years ago.

Q. You are familiar with the general processes——

A. Of press associations, yes.

Q. That is all unless you have something else that you think would be of help.

A. I have no further suggestions.

Mr. Ernst: This is the last we have.

Mr. Moscovitz: We went to introduce in evidence ten papers published on varying dates throughout the United States, for the purpose of indicating the extent of the printing of the Associated Press news in such newspapers. The newspapers being already marked as to the Associated [fol. 365] Press items that appear on the front page. Attention is called to the fact there are no doubt many other Associated Press stories on the other pages.

They are to be marked Guild Exhibits 1 to 10. I am introducing these for Mr. Ernst.

Trial Examiner Clark: Admitted.

(The Newspapers referred to were admitted in evidence and marked G-1 to G-10 inclusive.)

Mr. Moscovitz: Mr. Examiner, we have no further witnesses to produce.

Trial Examiner Clark: Very well. I don't suppose you want to make any suggestions to me. If you wish to, I suggest you write me. You don't need to—I don't require anything particularly; I have the material but if either of you wish to write me in the course of a couple of days you may do so.

I will declare the meeting closed then.

(The meeting thereupon adjourned at four-thirty o'clock.)

BOARD'S EXHIBIT 1

[fol. 366] This exhibit consists of the following documents:

1. Charge.
2. Complaint.
3. Return of Service.
4. Answer.
5. Amended Notice of Hearing (December 30, 1935).
6. Affidavit of Service.
7. Amended Notice of Hearing (March 20, 1936).
8. Affidavit of Service and Exhibits A and B.
9. Amended Notice of Hearing (March 21, 1936).
10. Return of Service.
11. Amended Notice of Hearing (April 2, 1936).
12. Return of Service.
13. Notice to Produce.
14. Return of Service.
15. Order Designating Trial Examiner.
16. Rules and Regulations.
17. Certification.

all of which appear printed herein ante at pp. 11-72 except for the rules and regulations which appear printed hereafter at pp. 392-417.

[fol. 367] BOARD EXHIBIT 2

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-R-3

In the Matter of THE ASSOCIATED PRESS
and
AMERICAN NEWSPAPER GUILD, by the National Executive Board Thereof

(Stamp) National Labor Relations Board. Case No. II—R—3 II—C—28 (Exhibit No. 2). Case II—R—3 in the Matter of A. P. Smith & Hulse, Official Reporters, by Sills

CERTIFICATION

I, Elinore Morehouse Herrick, the Regional Director for the Second Region, National Labor Relations Board, do hereby certify that the attached documents, namely:

1) Petition
2) Order Directing Investigation and Hearing
[fol. 368] 3) Notice of Hearing
4) Return of Service
5) Amended Notice of Hearing (March 20, 1936)
6) Affidavit of Service and Exhibits A and B
7) Amended Notice of Hearing (March 21, 1936)
8) Return of Service
9) Amended Notice of Hearing (April 2, 1936)
10) Return of Service
11) Order Designating Trial Examiner
12) Rules and Regulations

are true and correct copies of the originals of the above named documents in the above entitled matter on file in the Regional Office of the National Labor Relations Board for the Second Region.

In witness whereof I have hereunto set my hand this 6th day of April, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

[fol. 369] UNITED STATES OF AMERICA:

Before the National Labor Relations Board, Second Region

II-R-3

[Title omitted]

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(C) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—The Associated Press.

Address—383 Madison Avenue, New York, N. Y., and other addresses in various states and foreign countries.

General nature of business—The collection, formulation and transmission of world intelligence to newspapers in, to and among the several states, the District of Columbia, the territories of the United States and foreign countries.

Approximate number of employees—175 Description of [fol. 370] the bargaining unit which petitioner claims is appropriate—The Associated Press Unit of the Newspaper Guild of New York (branch of American Newspaper Guild), to the membership of which are eligible all editorial employees of the Associated Press in New York, N. Y., with the exception of executives.

Number and classification of employees which representatives on whose behalf petition is filed claim to represent—All editorial employees of The Associated Press in New York, N. Y. with the exception of executives.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—none.

Any other facts which petitioner considers relevant—Under the constitution of the American Newspaper Guild, the National Executive Board thereof is the sole agent of press association units for the purpose of collective bargaining.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that:—The undersigned has heretofore in writing charged, pursuant to Section 10 (b) of the National Labor Relations Act, that The Associated Press has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act. The Associated Press has raised the question as to whether the undersigned represented a majority of the editorial employees in the New York office of The Associated Press.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

[fol. 371] The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

American Newspaper Guild, by the National Executive Board Thereof by Jonathan Eddy, Executive Secretary 49 West 45th St., N. Y. C.

Subscribed and sworn to before me this 4th day of December, 1935, at New York, N. Y. Samuel Simon.

[fol. 372] UNITED STATES OF AMERICA:
National Labor Relations Board

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Directing Investigation and Hearing.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 11th day of December, A. D. 1935, at Washington, D. C.

Benedict Wolf, Secretary, National Labor Relations Board. (Seal.)

[fol. 373] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 10th day of December, 1935.

Present: J. Warren Madden, Chairman; John M. Carmody, Edwin S. Smith.

(Stamp.) Received Dec. 12, 1935, Regional Office, District 2.

Case No. II-R-3

[Title omitted]

ORDER DIRECTING INVESTIGATION AND HEARING

A petition having been filed in this matter for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, and the [fol. 374] Board hving considered same and being advised in the premises and it appearing to the Board that a question affecting commerce concerning the representation of employees has arisen.

It is hereby ordered that the Regional Director for the Second Region, conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of the Rules and Regulations—Series I of the

National Labor Relations Board, and report to the Board regarding such investigation and hearing.

J. Warren Madden, Chairman. John M. Carmody, Member. Edwin S. Smith, Member.

[fol. 375] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-R-3

[Title omitted]

NOTICE OF HEARING

There has heretofore been filed with the National Labor Relations Board, Second Region, a petition by American Newspaper Guild, by the National Executive Board thereof, alleging that a question affecting commerce within the meaning of Section 2, subsections (6) and (7), of the National Labor Relations Act has arisen concerning the representation of the employees in a certain unit, viz., in the editorial department, not engaged in an executive capacity, of the Associated Press (hereinafter called the employer) at 383 Madison Avenue, New York, New York, and requesting that, pursuant to authority granted in Section 9, subsection (c), of said Act, the National Labor Relations Board investigate such controversy and certify the name or names of the representatives that have been designated or selected by said employees.

[fol. 376] A copy of said petition is attached hereto.

It appearing to the National Labor Relations Board that a question affecting commerce within the meaning of Section 2, subsections (6) and (7), of the aforesaid Act, has arisen concerning the representation of employees in the aforesaid unit of the employer's organization.

You are hereby notified that, pursuant to Section 9, subsection (c), of said Act, on the ninth day of January, 1936, at ten o'clock in the forenoon, in the hearing room (Room 726), of the offices of the National Labor Relations Board for the Second Region at 45 Broadway, New York, New York, a hearing will be conducted before the National Labor Relations Board, by its agent designated by National Labor Relations Board Rules and Regulations, Series 1 (General Rules and Regulations), Article IV, Section 3, and Article III, Section 5, upon the question of representation

affecting commerce which has arisen, at which time and place you shall have the right to appear, in person or otherwise, and give testimony.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article III of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its notice of hearing, to be signed by the Regional Director for the Second Region on the twentieth day of December, 1935.

Elinore Morehouse Herrick, Regional Director for the Second Region, 45 Broadway, New York, New York.

[fol. 377] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-R-3

[Title omitted]

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(C) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—The Associated Press.

Address—383 Madison Avenue, New York, N. Y. and other addresses in various states and foreign countries.

General nature of business—The collection, formulation and transmission of world intelligence to newspapers in, to and among the several states, the District of Columbia, the territories of the United States and foreign countries. [fol. 378] Approximate number of employees—175. Description of the bargaining unit which petitioner claims is apropriate—The Associated Press Unit of the Newspaper Guild of New York (branch of American Newspaper Guild), to the membership of which are eligible all editorial employees of The Associated Press in New York, N. Y., with the exception of executives.

Number and classification of employees which representatives on whose behalf petition is filed claim to represent

—All editorial employees of The Associated Press in New York, N. Y. with the exception of executives.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

Any other facts which petitioner considers relevant—Under the constitution of the American Newspaper Guild, the National Executive Board thereof is the sole agent of press association units for the purpose of collective bargaining.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that:—The undersigned has heretofore in writing charged, pursuant to Section 10(b) of the National Labor Relations Act, that The Associated Press has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act. The Associated Press has raised the question as to whether the undersigned represented a majority of the editorial employees in the New York office of The Associated Press.

[fol. 379] The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

American Newspaper Guild, by the National Executive Board thereof by Jonathan Eddy, Executive Secretary, 49 West 45th St., N. Y. C.

Subscribed and sworn to before me this 4th day of December, 1935, at New York, N. Y. Samuel Simon, Notary Public. N. Y. Co. Clk's No. 724, Reg. No. 6S425. Commission Expires March 30, 1936. (Seal.)

[fol. 380] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of December, 1935.

Present: —— ——.

Case No. II-R-3

[Title omitted]

ORDER PROVIDING FOR HEARING IN CONJUNCTION WITH A PROCEEDING UNDER SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

A petition having been filed in this matter for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, and the Board, by order duly made on December 10, 1935, having directed that the Regional Director for the Second Region conduct an investigation in this matter and provide for an appropriate hearing upon due notice, and the Regional Director for the Second Region, as agent of the National Labor Relations Board, designated by National Labor Re- [fol. 381] lations Board Rules and Regulations,—Series 1, Article IV, Section 1, having theretofore issued its complaint and notice of hearing thereon against The Associated Press in a proceeding under Section 10 of the National Labor Relations Act entitled "In the Matter of The Associated Press and the American Newspaper Guild," being known as Case No. II-C-28; and the Board, being advised in the premises,

It is Hereby Ordered that said order of December 10, 1935, is hereby revoked insofar as the Regional Director for the Second Region is authorized to provide for an appropriate hearing upon due notice, and,

It is Further Ordered, pursuant to authority granted in Section 9 (c) of said Act, that the hearing in this matter shall be held in conjunction with said proceeding under Section 10 of said Act, at the time and place fixed in the notice of hearing in said proceeding and before a Trial Examiner to be designated by the Board pursuant to Na-

tional Labor Relations Board Rules and Regulations—Series 1, Article II, Section 5.

By direction of the Board:

(Signature) Benedict Wolf, Secretary.

Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Notice of Hear-
[fol. 382] ing in the matter of The Associated Press, a corporation, and American Newspaper Guild, by the National Executive Board, thereof,

(in person
(by registered mail
(by telegraph
X (by leaving copy at principal office
(or place of business, to-wit:

on Mr. Kent Cooper, through his secretary Miss Hedger, 383 Madison Avenue, New York, New York, on December 20, 1935, at five-forty o'clock P.M.

William Meyer, Examiner, Second Region, National Labor Relations Board, 45 Broadway, New York, N. Y.

Amended Notice of Hearing

You are Hereby Notified that, pursuant to Section 9, subsection (c), of said Act, on the 31st day of March, 1936, at ten o'clock in the forenoon, in Room 433, Old Post Office Building, Broadway and Park Row, New York, New York, a hearing will be conducted before the National Labor Relations Board, by its agent designated by National Labor Relations Board Rules and Regulations, Series 1, (General Rules and Regulations), Article IV, Section 3, and Article III, Section 5, upon the question of representation affecting commerce which has arisen in the matter of The Associated Press, and American Newspaper Guild, by the [fol. 383] National Executive Board Thereof—Case No. II-R-3—at which time and place you shall have the right to appear, in person or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for that paragraph in the Notice of Hearing, issued by me under date of December 20, 1935, commencing with the words

"You are Hereby Notified * * *" and ending with the words "* * * and give testimony."

In Witness Whereof, the National Labor Relations Board has caused this substitution and amendment of Notice of Hearing to be signed by the Regional Director for the Second Region, on the 20th day of March, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

[fol. 384] Affidavit of Service

Case No. II-R-3

[Title omitted]

STATE OF NEW YORK,
County of New York, ss:

Mildred L. Dwyer, Stenographer, Second Region, being duly sworn, deposes and says that on the 20th day of March, 1936 she did, as agent for the National Labor Relations Board, serve upon The Associated Press, 383 Madison Avenue, New York, New York, Attention: Mr. Kent Cooper; and upon Messrs Davis, Polk, Wardwell, Gardiner and Reed, 15 Broad Street, New York, New York, Attention: John W. Davis, Esq., in the above-entitled matter, by sending on that date to the foregoing-named, at the addresses heretofore mentioned, Amended Notice of Hearing, by postpaid mail special delivery registered return receipt requested; and deponent further states that she did receive therefor from the United States Post Office (Station P, New York, New York) Receipt for Registered Article No. 351620 and No. 351621, respectively, dated March 20, 1936, [fol. 385] which receipts and letters of enclosure are attached hereto and Marked "Exhibit A" and "Exhibit B."

Mildred L. Dwyer.

Subscribed and sworn to before me this 24th day of March, 1936. Albert L. Fager, Notary Public, New York County No. 6. New York Co. Register's No. 6-F-198. My Commission expires March 30, 1936.

Exhibit A

March 20, 1936.

The Associated Press, 383 Madison Avenue, New York City, Attention: Mr. Kent Cooper

GENTLEMEN:

There is enclosed Amended Notice of Hearing in the matter of The Associated Press and American Newspaper Guild, by The National Executive Board Thereof, (Case II-R-3) before this Board.

Yours very truly, Elinore Morehouse Herrick, Regional Director, Second Region.

Special Delivery Return Receipt No. 351620.

Enclosure.
EMH:D.

[fol. 386] Exhibit B

March 20, 1936.

Messrs. Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City.

Attention John W. Davis, Esq.

MY DEAR MR. DAVIS:

There is enclosed Amended Notice of Hearing in the matter of The Associated Press and American Newspaper Guild, by The National Executive Board Thereof, (Case II-R-3) before this Board.

Very truly yours, Elinore Morehouse Herrick, Regional Director, Second Region.

Special Delivery Return Receipt No. 351621.

Enclosure.
EMH:D.

Amended Notice of Hearing

You are Hereby Notified that, pursuant to Section 9, subsection (c), of said Act, on the 7th day of April, 1936, at ten o'clock in the forenoon, in Room 136, New United State Courts Building, Foley Square, New York, New York, a hearing will be conducted before the National Labor

Relations Board, by its agent designated by National Labor [fol. 387] Relations Board Rules and Regulations, Series 1, (General Rules and Regulations), Article IV, Section 3, and Article III, Section 5, upon the question of representation affecting commerce which has arisen in the matter of The Associated Press, and American Newspaper Guild, by the National Executive Board Thereof—Case No. II-R-3—at which time and place you shall have the right to appear, in person or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Amended Notice of Hearing issued by me under date of March 20th, 1936.

In Witness Whereof, the National Labor Relations Board has caused this substitution and Amendment of Notice of Hearing to be signed by the Regional Director for the Second Region, on the 21st day of March, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Amended Notice of Hearing, dated March 21, 1936, in the matter of The Associated Press and American Newspaper Guild, by the National Executive Board Thereof (Case II-R-3),

[fol. 388] (in person
(by registered mail
(by telegraph
(by leaving copy at principal office
XX (or place of business, to wit:
(15 Broad Street, New York, New York

on Messrs. Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, New York (Attention: John W. Davis, Esq.), duly authorized attorneys for The Associated Press, on Saturday, March 21, 1936, at twelve-fifty-five o'clock in the afternoon.

Malvina Kerner, Stenographer, National Labor Relations Board, Second Region.

Amended Notice of Hearing

You are Hereby Notified that, pursuant to Section 9, subsection (c), of said Act, on the 7th day of April, 1936,

at ten o'clock in the forenoon, in Room 433, Old Post Office Building, Broadway and Park Row, New York, New York, a hearing will be conducted before the National Labor Relations Board by its agent designated by National Labor Relations Board Rules and Regulations, Series 1 (General Rules and Regulations), Article IV, Section 3, and Article III, Section 5, upon the question of representation affecting commerce which has arisen in the matter of The Associated Press, and American Newspaper Guild, by the National Executive Board Thereof—Case No. II-R-3—at which time [fol. 389] and place you shall have the right to appear, in person or otherwise, and give testimony.

The foregoing paragraph is hereby substituted for the first paragraph in the Amended Notice of Hearing issued by me under date of March 21st, 1936.

In Witness Whereof, the National Labor Relations Board has caused this substitution and amendment of Amended Notice of Hearing to be signed by the Regional Director for the Second Region, on the 2nd day of April, 1936.

Elinore Morehouse Herrick, Regional Director for the Second Region, National Labor Relations Board.

Return of Service

I hereby certify that, being a person over eighteen years of age, I duly served a copy of the within Amended Notice of Hearing in the matter of The Associated Press, a corporation, and American Newspaper Guild, by the National Executive Board Thereof (Case II-R-3),

(in person
(by registered mail
(by telegraph
(by leaving copy at principal office
X (or place of business, to wit:
(15 Broad Street, New York, New York,

[fol. 390] on Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York, New York, attorneys for The Associated Press, on April 2, 1936, at two-fifteen o'clock in the afternoon.

William Meyer, Examiner, Second Region, National Labor Relations Board.

UNITED STATES OF AMERICA:

National Labor Relations Board

I, B. M. Stern, Acting Secretary of the National Labor Relations Board and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Designating Trial Examiner in the Matter of The Associated Press and American Newspaper Guild.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 31st day of December, A. D. 1935, at Washington, D. C.

B. M. Stern, Acting Secretary, National Labor Relations Board. (Seal.)

[fol. 391] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 30th day of December, 1935.

Present: John M. Carmody. Edwin S. Smith.

Case No. II-R-3

[Title omitted]

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 2nd Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is Hereby Ordered that Charles E. Clark act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the Nation- Labor Relations Board.

(S.) Jno. M. Carmody, Member. (S.) Edwin S. Smith, Member.

[fol. 392] National Labor Relations Board, Washington, D. C.

Rules and Regulations—Series 1

General Rules and Regulations

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby makes the following rules and regulations which it finds necessary to carry out the provisions of said Act. Said rules and regulations shall become effective upon publication in the manner prescribed in Article VI thereof and shall be in force and effect until amended or rescinded by rules and regulations hereafter made and published by said Board.

Signed at Washington, D. C., this 14th day of September, 1935.

(Signed) J. Warren Madden. John M. Carmody. Edwin S. Smith.

Article I

Definitions

Section 1. The terms "person", "employer", "employee", "representatives", "labor organization", "commerce", "affecting commerce", and "unfair labor practice", as used herein, shall have the meaning set forth in Section 2 of the National Labor Relations Act, a copy of which Act is appended hereto.

[fol. 393] Section 2. The term "Act" as used herein shall mean the National Labor Relations Act, and the term "Board" shall mean the National Labor Relations Board.

Section 3. The term "Region" as used herein shall mean that part of the United States or any Territory thereof fixed by the Board as a particular Region.

Section 4. The term "Regional Director" as used herein shall mean the agent designated by the Board as Regional Director for a particular Region.

Section 5. The term "Trial Examiner" as used herein shall mean the Board, its member, agent or agency conducting hearing.

Section 6. The term "State" as used herein shall include all States, territories, and possessions of the United States and the District of Columbia.

Article II

Procedure under Section 10 of the Act for the Prevention of Unfair Labor Practices

Charge

Section 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization.[1] No [fol. 394] charge may be withdrawn except with the consent of the Regional Director with whom such charge was filed or of the Board.

Section 2. Except as provided in Section 35 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair practice has occurred or is occurring.

Section 3. Such charge shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of such charge shall be filed. A blank form for making a charge will be supplied by the Regional Director upon request.

Section 4. Such charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

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[1] "Person" is defined in the Act as including "one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

"Labor organization" is defined in the Act as meaning "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

[fol. 395] (b) The full name and address of the person against whom the charge is made (hereinafter referred to as the "respondent").

(c) A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

Complaint

Section 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the "parties to the proceeding") a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the serving of said complaint.

Section 6. Upon his own motion or upon proper cause shown by any of the parties to the proceeding the Regional Director issuing the complaint may extend the date of such hearing.

Section 7. Any such complaint may be amended by the Trial Examiner or the Board in his or its discretion at any time prior to the issuance of an order based thereon, upon such terms as may be deemed just.

[fol. 396] Section 8. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director. The Regional Director shall thereupon transmit the charge to the Board together with a report stating briefly the reasons for declining to issue the complaint.

Answer

Section 9. The respondent shall have the right, within five days from the service of the complaint, to file an answer thereto. Such answer shall contain a short and simple

statement of the facts which constitute the grounds of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation in the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board.

Section 10. Such answer shall be filed with the Regional Director issuing the complaint. Such answer shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate [fol. 397] power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall file three additional copies of the answer for the use of the Board. Immediately upon filing his answer the respondent shall serve a copy thereof upon each of the other parties to the proceeding, or file a copy for each such party with the Regional Director, who shall cause such copy to be served upon such party.

Section 11. Upon his own motion or upon proper cause shown by respondent the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

Section 12. In any case where a complaint has been amended the respondent shall have an opportunity to amend his answer within such period as may be fixed by the Trial Examiner or the Board amending the complaint.

Motions

Section 13. All motions made previous to or subsequent to the hearing shall be filed in writing with the Regional Director issuing the complaint, and shall briefly state the order or relief applied for and the grounds for such motion. The moving party shall file an original and three additional copies of all such motions for the use of the Board. Immediately upon the filing of such motion, the moving party shall serve a copy thereof upon each of the other parties to the proceeding, or file a copy for each [fol. 398] such party with the Regional Director, who shall cause such copy to be served upon such party. All motions

made at the hearing (except motions to intervene, as provided in Section 18 of this Article) shall be stated orally and included in the stenographic report of the hearing.

Section 14. The Trial Examiner, as specified in the notice of hearing, shall rule upon all motions (except as provided in Section 18 of this Article). Rulings on motions, and any orders in connection therewith, if announced at the hearing, shall be stated orally and included in the stenographic report of the hearing; in all other cases they shall be issued in writing and filed with the Regional Director, who shall cause a copy of the same to be served upon each of the parties to the proceeding.

Section 15. All motions, rulings and orders shall become part of the record in the proceeding and rulings and orders claimed to be substantially prejudicial shall be reviewed by the Board, upon request made for such review, in conjunction with the Board's consideration of the intermediate report provided for hereinafter in this Article.

Section 16. If any motion in the nature of a motion to dismiss the complaint is granted by the Trial Examiner, the party making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director. The Regional Director shall therewith [fol. 399] transmit to the Board the charge, complaint, motion, ruling on the motion, and all other relevant papers in the case.

Section 17. No objection to rulings upon motions shall be deemed waived by the filing of an answer or by other participation in the proceedings before the Trial Examiner or the Board.

Intervention

Section 18. Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing with the Regional Director issuing the complaint setting out the grounds upon which such person or organization claims to be interested. The original of such motion shall be signed and sworn to by the person or labor organization filing the motion, who shall file three additional copies of such motion for the use of the Board. Immediately upon

filing such motion, the moving party shall serve a copy thereof upon each of the parties to the proceeding, or file a copy for each party with the Regional Director, who shall cause such copy to be served upon such party. The Regional Director shall rule upon all such motions filed prior to the hearing, and the Trial Examiner shall rule upon all such motions filed at the hearing, in the manner set forth in Section 14 of this Article. The Regional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just. The Regional Director shall cause a copy of said ruling to be served upon each of the parties to the proceeding.

[fol. 400] Witnesses and Subpoenas

Section 19. Witnesses shall be examined orally under oath, except that for good and exceptional cause the Trial Examiner may permit their testimony to be taken by deposition under oath. Any such deposition shall be taken in accordance with the procedural requirements for the taking of depositions provided by the law of the State in which the hearing is pending.

Section 20. Subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondance, or documents, that relates to any matter under investigation or in question, may be issued by any member of the Board. Application for the issuance of such subpoenas may be filed with the Regional Director by any party to the proceedings. Such applications shall be timely and shall specify the name of the witness and the nature of the facts to be proved by him, and must specify the documents, the production of which is desired, with such particularity as will enable them to be identified for purposes of production.

Section 21. Witnesses summoned before the Trial Examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at [fol. 401] whose instance the witnesses appear and the per-

son taking the deposition shall be paid by the party at whose instance the deposition is taken.

Hearing

Section 22. Hearings for the purpose of taking evidence upon a complaint shall be conducted by the Trial Examiner specified in the notice of hearing, or specially designated by the Board or by the Regional Director. Such hearings shall be public, unless otherwise ordered by the Trial Examiner.

Section 23. It shall be the duty of the Trial Examiner to inquire fully into the facts as to whether the respondent has engaged or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. Counsel for the Board, and the Trial Examiner, shall have power to call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.

Section 24. Any party to the proceeding shall have the right to appear at such hearing in person, by counsel or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

Section 25. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

Section 26. In any such proceeding stipulations of fact [fol. 402] may be introduced in evidence with respect to any issue.

Section 27. Objections with respect to the conduct of the hearing, including objections to the introduction of evidence, shall be stated orally, together with the grounds of such objection, and included in the stenographic report of the hearing. No such objection shall be deemed waived by further participation in the proceeding.

Section 28. Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. The parties shall be entitled to file briefs or written statements only with permission of the Trial Examiner.

Section 29. In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice.

Intermediate Report and Transmission of Case to the Board

Section 30. After a hearing for the purpose of taking evidence upon a complaint the Trial Examiner shall prepare an intermediate report, which he shall file with the Regional Director issuing the complaint, who will thereafter transmit said report to the Board in Washington, D. C., and cause [fol. 403] a copy thereof to be served upon each of the parties to the proceeding. Such report shall contain (a) findings of fact, separately stated and numbered, and (b) recommendations as to what disposition of the case should be made, which may include, if it be found that respondent has engaged or is engaging in the alleged unfair labor practice, a recommendation as to what affirmative action should be taken by respondent to bring about a condition in harmony with the law.

Section 31. Thereafter the Regional Director issuing the complaint shall forward to the Board in Washington, D. C., the charge, complaint, amended complaint, notice of hearing, answer, amended answer, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the intermediate report and exceptions, shall constitute the record in the case.

Exceptions to the Record and Intermediate Report

Section 32. If any party desires to take an exception to the intermediate report or to any other part of the record (including rulings upon all motions or objections) he shall within ten days from the date of service of said report file with the Board at Washington, D. C., four copies of a statement in writing setting forth such exceptions. Immediately upon the filing of such statement of exceptions the party fil- [fol. 404] ing the same shall serve a copy thereof upon each of the other parties to the proceeding, or file a copy for each such party with the Board, which shall cause such copy to

be served upon such party. Extension of the period within which to file such statement of exceptions may be granted only by the Board.

Section 33. No matter not included in such statement of exceptions may thereafter be objected to before the Board, and failure to file a statement of exceptions shall operate as submission of the case to the Board on the record and the report.

Procedure Before the Board

Section 34. Upon expiration of the period for filing a statement of exceptions, as provided in Section 32 of this Article, the Board may decide the matter forthwith upon the record, or after the filing of briefs or oral argument, or may reopen the record and receive further evidence or require the taking of further evidence before a member of the Board or other agent or agency, or may make other disposition of the case. The Board shall notify the parties of the time and place for any such submission of briefs, oral argument or taking of further evidence.

Section 35. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce to be filed with it, in Washington, D. C., or may, at any stage of a proceeding instituted in any Region, direct that such proceeding be [fol. 405] transferred to and continued before it. The provisions of Sections 3 to 29, inclusive, of this Article shall, insofar as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board.

Section 36. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 35 of this Article, the Board may

(a) direct that the Trial Examiner prepare an intermediate report, in which case the provisions of Sections 30 to 34, inclusive, of this Article shall insofar as applicable govern subsequent procedure, and the powers granted to

Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(b) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(c) reopen the record and receive further evidence before the Board, or a member, agent or agency; or

(d) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument or taking of further evidence.

[fol. 406] Section 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may, at any stage of a proceeding instituted in any Region, order that such proceeding be transferred to and continued in any other Region, or may, at any stage of such proceeding, order that such proceeding be transferred to any other Region for purposes of consolidation with a proceeding in such other Region. After the transfer of any proceeding pursuant to this Section, the provisions of Sections 3 to 34, inclusive, of this Article shall apply to such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

Article III

Procedure under Section 9 (c) of the Act for the Investigation and Certification of Representatives

Section 1. A petition requesting the Board to investigate and certify under Section 9 (c) of the Act the name or names of the representatives designated or selected for the purpose of collective bargaining may be filed by any employee or any person or labor organization acting on his behalf (hereinafter referred to as the "petitioner"). Except as provided in Section 11 of this Article, such petition shall be filed with the Regional Director for the Region wherein the contemplated bargaining unit exists and shall be in writing, the original being signed and sworn to before any notary public [fol. 407] or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of the petition shall be filed. A blank form for filing such a

petition will be supplied by the Regional Director upon request.

Section 2. Such petition shall contain the following:

(a) The name and address of the petitioner.

(b) The name and address of the employer or employers involved, the general nature of their businesses, and the approximate number of their employees.

(c) A description of the bargaining unit claimed to be appropriate, the approximate number of employees therein, the number and classifications of employees which the representatives on whose behalf the petition is filed claim to represent, the names of any other known individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit.

(d) A brief statement setting forth the nature of the question or controversy affecting commerce that has arisen concerning representation.

(e) Any other relevant facts.

Section 3. If it appears to the Board that an investigation should be instituted it shall so direct and (except as provided [fol. 408] in Section 11 of this Article) shall authorize the Regonal Director to undertake such investigation. The Regional Director shall thereupon proceed with such investigation and in connection therewith shall prepare and cause to be served upon the petitioner, upon the employer or employers involved and upon any known individuals or labor organizations purporting to act as representatives for collective bargaining of any employees directly affected by such investigation (all of whom are hereinafter referred to as the "parties to the proceeding"), a notice of a hearing upon the question of representation before a Trial Examiner at a time and place therein fixed. A copy of the petition shall be served with such notice of hearing. The Regional Director shall give public notice of such hearing in such manner as he may deem appropriate.

Section 4. All matters relating to motions, interventions, witnesses and subpoenas shall be governed by the provisions of Sections 13 to 21 inclusive of Article II above.

Section 5. The hearing upon the question of representation shall be conducted by the Trial Examiner specified in the notice of hearing, or specially designated by the Board or by the Regional Director, and shall be open to the public unless otherwise ordered by the Trial Examiner. It shall be the duty of the Trial Examiner to inquire fully into the question of representation. Counsel for the Board, and the Trial Examiner, shall have power to call, examine and cross-examine witnesses and to introduce into the record documentary and other evidence.

[fol. 409] Section 6. The introduction of evidence at the hearing and the rights of the parties to the proceedings shall be governed by Sections 24, 25, 26, 27 and 28 of Article II above.

Section 7. Upon the close of the hearing the Regional Director shall forward to the Board in Washington, D. C., the petition, notice of hearing, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which shall constitute the record in the proceeding.

Section 8. The Board shall thereupon proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or after further hearing, as it may determine, to certify to the parties to the proceeding the name or names of the representatives that have been designated or selected, or to direct a secret ballot of the employees in order to complete the investigation, or to make other disposition of the matter.

Section 9. Where the Board determines that a secret ballot should be taken it shall direct such ballot to be conducted by a designated agent or agency in accordance with such terms as it may specify. Upon conclusion of such ballot the agent or agency conducting the ballot shall prepare an intermediate report containing a tally of the ballots, its findings and its recommendations, which it shall cause to be served upon the parties to the proceeding. Within five days thereafter the parties to the proceeding may file with the Regional Director any objection to the ballot or the report. If it appears to the Regional [fol. 410] Director that any such objection raises a substantial and material issue with respect to the conduct of the ballot he shall issue and cause to be served upon the

parties a notice of hearing on said objections before a Trial Examiner. Said Trial Examiner shall consider such objections raised to said ballot and shall prepare and file with the Regional Director a report containing findings and recommendations with respect thereto. Thereafter the Regional Director shall forward to the Board in Washington, D. C., the report of the agency conducting the ballot, the objections filed thereto, the notice of hearing, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article. If no objection raising a substantial and material issue with respect to the conduct of the ballot is filed to the report of the agency conducting the ballot the Regional Director shall forward directly to the Board in Washington, D. C., said report, which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article.

Section 10. Any hearing under Section 9 (c) of the Act with respect to the certification of representatives may be held in conjunction with a proceeding on a complaint of an unfair labor practice under Section 10 of the Act.

[fol. 411] Section 11. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may

(a) permit a petition requesting an investigation and certification to be filed with it, and may upon the filing of such petition proceed to conduct an investigation under Section 9 (c) of the Act or direct any member, Regional Director or other agent or agency to conduct such an investigation; or

(b) upon its own motion conduct or direct any member, Regional Director or other agent or agency to conduct such an investigation; or

(c) at any stage of a proceeding under Section 9 (c) of the Act instituted in any Region, direct that such proceeding be transferred to and continued before it.

The provisions of this Article shall, insofar as applicable, apply to proceedings conducted pursuant to this Section, and the powers granted to Regional Directors in

such provisions shall for the purpose of this Section be reserved to and exercised by the Board or by the member, Regional Director, or other agent or agency directed to conduct the investigation.

Section 12. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may, at any stage of an investigation being conducted in any Region, [fol. 412] direct that such proceeding be transferred to and continued in any other Region, or may, at any stage of such proceeding, order that such proceeding be transferred to any other Region for purposes of consolidation with a proceeding being conducted in such other Region. After the transfer of any proceeding pursuant to this Section, the provisions of this Article shall apply to such proceeding as if the Board had originally directed that the investigation be conducted in the Region to which the transfer is made.

Article IV

Designation of Regional Directors, Examiners and Attorneys as Agents of the Board

Section 1. All Regional Directors now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigations, in accordance with Section 9 (*c*) of the Act.

(c) To issue and cause to be served complaints, to amend complaints, and to conduct hearings upon such complaints, in accordance with Section 10 (b) of the [fol. 413] Act.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Section 2. All Examiners now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees), in accordance with Section 9 (c) of the Act.

(c) To have access to and the right to copy evidence, and to administer oaths and affirmations, in accordance with Section 11 (1) of the Act.

Section 3. All Attorneys now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of em- [fol. 414] ployees) and conduct hearings in connection with such investigation, in accordance with Section 9 (c) of the Act.

(c) To amend complaints issued under Section 10 (b) of the Act and to conduct hearings upon such complaints, in accordance with said Section.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Section 4. The foregoing designations shall not be construed to limit the power of the Board to make such special designation of agents as may in its discretion be necessary or proper to effectuate the purposes of the Act.

Article V

Service of Papers

Section 1. Complaints, orders, and other process and papers of the Board, its member, agent or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting

forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid [fol. 415] shall be proof of service of the same.

Section 2. Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

Article VI

Publication and Effective Date

Section 1. These rules and regulations shall become effective upon the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, and upon making copies thereof available to the press and placing copies in each Regional Office and in the office of the Board at Washington, D. C., for public inspection.

Article VII

Construction of Rules

Section 1. These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the Act.

[fol. 416]

Article VIII

Amendments

Section 1. Any rule or regulation may be any time be amended or rescinded by the Board.

National Labor Relations Board,

Washington, D. C.

Rule and Regulation Authorizing Secretary of the Board to Sign Certain Documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board does hereby authorize the Secretary

of the Board, at the direction of the Board in each instance, to sign on behalf of the Board in accordance with the provisions of Section 35, Article II of its Rules and Regulations—Series 1 (signed the 14th day of September, 1935) permissions that a charge may be filed with the Board, orders directing proceeding to be transferred to and continued before the Board, and to sign and issue complaints under Section 10 (b) of the National Labor Relations Act in cases in which the Board shall have authorized the issuance of a complaint, and to sign on behalf of the Board and at its direction in each instance, such orders as may be necessary to be made under Section 9(a), 9 (b), 9 (c) and 9 (d) of the National Labor Relations Act. This Rule and Regulation shall be effective upon its publication in the following manner, namely, by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original [fol. 417] shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

(Signed) J. Warren Madden, Chairman. Edwin S. Smith, Member. Jno. M. Carmody, Member.

National Labor Relations Board,

Washington, D. C.

Rule and Regulation Authorizing the Secretary of the Board to Certify Copies of Papers and Documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

(Signed) J. Warren Madden, Chairman. Edwin S. Smith, Member. Jno. M. Carmody, Member.

[fol. 418] BOARD'S EXHIBIT 3

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

ORDER PROVIDING FOR HEARING IN CONJUNCTION WITH A PROCEEDINGS UNDER SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, IN THE MATTER OF THE ASSOCIATED PRESS AND AMERICAN NEWSPAPER GUILD, CASE NO. II-R-3

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of Order Providing for Hearing in Conjunction with a Proceeding Under Section 10 of the National Labor Relations Act, In the Matter of The Associated Press and American Newspaper Guild, Case No. II-R-3.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 17th day of December A. D. 1935, at Washington, D. C.

Benedict Wolf, Secretary. (Seal)

[fol. 419] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of December, 1935.

Present: —— ——.

Case No. II-R-3

In the Matter of THE ASSOCIATED PRESS

and

AMERICAN NEWSPAPER GUILD

Order Providing for Hearing in Conjunction with a Proceeding Under Section 10 of the National Labor Relations Act

A petition having been filed in this matter for an investigation and certification of representatives pursuant to section 9(c) of the National Labor Relations Act; and the Board, by order duly made on December 10, 1935, having directed that the Regional Director for the Second Region conduct an investigation in this matter and provide for an appropriate hearing upon due notice; and the Regional Director for the Second Region, as agent of the National Labor Relations Board, designated by National Labor Re- [fol. 420] lations Board Rules and regulations,—Series 1, Article IV, Section 1, having theretofore issued its complaint and notice of hearing thereon against The Associated Press in a proceeding under Section 10 of the National Labor Relations Act entitled "In the Matter of The Associated Press and the American Newspaper Guild", being known as Case No. II-C-28; and the Board, being advised in the premises,

It is hereby ordered that said order of December 10, 1935, is hereby revoked insofar as the Regional Director for the Second Region is authorized to provide for an appropriate hearing upon due notice, and,

It is Further Ordered, pursuant to authority granted in Section 9(c) of said Act, that the hearing in this matter shall be held in conjunction with said proceeding under Section 10 of said Act, at the time and place fixed in the notice of hearing in said proceeding and before a Trial Examiner to be designated by the Board pursuant to National Labor Relations Board Rules and Regulations—Series 1, Article II, Section 5.

By direction of the Board:

Benedict Wolf, Secretary.

[fol. 421] BOARD'S EXHIBITS 4 AND 5

These exhibits are omitted pursuant to order of the Circuit Court of Appeals.

BOARD'S EXHIBIT 6

AP.

14CH 150 QUESTION WAGNER ACT'S CONSTITUTIONALITY IN LABOR HEARING.

CH

R209PES NOV 21 NM

BOARD'S EXHIBIT 7

C108CH
LEAD

GREENVILLE, S. C., Nov. 21—(AP)—CONSTITUTIONALITY OF THE WAGNER LABOR DISPUTES ACT WAS QUESTIONED TODAY IN A HEARING BEFORE JOHN M. CARMODY, MEMBER OF THE NATIONAL LABOR RELATIONS BOARD, ON CHARGES THAT THE CLINTON COTTON MILLS, OF CLINTON, S. C., DISCRIMINATED AGAINST UNION LABOR AND RESORTED TO UNFAIR LABOR PRACTICES.

H. S. BLACKWELL AND RALPH T. WILSON, COUNSEL FOR THE CLINTON CONCERN, FILED A MO-
[fol. 422] TION TO DISMISS THE COMPLAINT ON THE GROUNDS THE WAGNER LABOR DISPUTES ACT DOES NOT APPLY TO INTRA-STATE RELATIONS BETWEEN EMPLOYER AND EMPLOYE.

THEY CONTENDED FURTHER THAT IF IT WAS INTENDED TO DO THIS, IT WAS IN VIOLATION OF ARTICLE 10 OF THE CONSTITUTION AND ALSO VIOLATED THE FIFTH AMENDMENT TO THE CONSTITUTION.

CARMODY OVERRULED THE MOTION FOR DISMISSAL.

CHARGES AGAINST THE MILL ARE THAT IT DISMISSED MORE THAN 100 EMPLOYES FOR REFUSING TO JOIN THE FRIENDSHIP ASSOCIATION, DESCRIBED BY THE UNITED TEXTILE WORKERS AS A COMPANY UNION, AND THAT ITS OFFICIALS REFUSED TO BARGAIN COLLECTIVELY WITH LOCAL NO. 1282 OF THE U. T. W.

R240PES

[fol. 423] BOARD'S EXHIBIT 8

Day State-East Wires

Market Schedule

A WIRE

NY stock averages
NY bond averages
NY stable price trends
East NY weather
8.00a London bar gold
ooa London bar silver
9.30a NY Wall St. briefs
45a NY Wall St. add open
10.00a NY cotton open
00a NY rubber open
12a NY Wall St. opening
30a WX Treasury balances
30a Montreal silver
30a CX grain open
11.10a NY Wall St. early lead
35a NY Wall St. add early lead
45a NY Curb review
45a NY Bond review
12.15p NY Fgn. mkts. at a glance
20p NY Wall St. lead
30p NY bar silver
30p NY foreign exchange rates
30p Undated fgn. exchange
2.00p NY cotton lead
00p CX grain lead
12p NY Wall St. precede
15p NY metals
15p NY money rates
30p CX grain add lead
30p CX mkts at a glance
30p NY Mkts at a glance
55p NY Wall St. new lead

STATE B

9.30a NY poultry
10.30a CX grain table
11.10a NY flour
15a NY state fruit mkt add
15a NY eggs (yellow sheet)
20a NY potatoes
25a NY State fruit & veg lead
30a NY butter & cheese
30a CX butter & eggs
NY ship arrivals
12.00n CX livestock
00n NY sugar
20p NY add eggs
50p NY livestock
1.00p NY poultry add
2.00p CX cash grain
30p CX grain table
30p NY curb lead
30p NY bond lead
30p CX lard, ribs, bellies
3.00p NY rubber close
30p Montreal silver close
30p NY bond sales
30p NY stock sales
30p NY US Govt bonds (table)

EAST B

10.30a CX grain table (1st col- wheat corn oats)
NY ships
11.45a NY noon commercial paper

[fol. 424]

BOARD'S EXHIBIT 8—(Continued)

3.10p NY Wall St. add lead
10p NY cotton add lead
20p NY staple price trend insert
20p NY What stocks did
[illegible]p NY stock average insert
[illegible]p NY bond average insert

WEDNESDAY

NY Iron Age Review
NY Electric power output

FRIDAY

NY Dun-Brad review
Boston wool

SATURDAY

NY weekly bank clearings
NY business indicators
NY weekly business surveys

SUNDAY

NY wkly fncl for Monday AMS.

12.00n London money
1.15p NY stock list
2.30p CX grain table (close) (last col-wheat, corn, oats, rye, barley)
45p NY wool top futures
3.00p NY coffee
10p NY cocoa (last col)
15p NY raw hides (last col)
15p NY silk futures
15p NY rubber futures (in full)
25p NY Ut Govt bonds (in full)
30p Montreal silver

SAVE FOR NIGHT

NY potatoes
flour
eggs
add eggs
butter
dry goods

SATS: CX livestock

[fol. 425] Day South Routine

(Corrected to October 1, 1935)

Radio day-by-day
Staple prices
Stock Averages
Bond averages
(Above usually move in night report or early)

London bar gold
London bar silver
Cotton comment
Foreign news thumbnail
Add opening wall street
Wall street briefs

Washington treasury balances
Ny live poultry
Wall street opening

NY sugar review (x)
NY foreign exchange
St. Louis produce
Savannah naval stores
Add NY eggs
Add NY poultry
Add Chicago butter and eggs
NY money rates (x)

Precede wall street (x)
2pm cotton table
NY metals
Lead cotton
Lead sugar

Chicago lead grain
Chicago grain table

BOARD'S EXHIBIT 8—(Continued)

NY-NU cotton table
NY cotton opening
NY rubber opening

Cincinnati livestock
Toronto weather (last line)
Foreign markets at glance
Tobacco open (must G wire)
Chicago grain table
Chicago grain opening
Liverpool cotton (edited copy)
Stocks coded (must G wire)

Early lead wall street
NY clean rice
NY produce

[fol. 426] Curb review
Add cotton opening
Chicago poultry
East St. Louis livestock

London money (yellow sheet)
Chicago butter and eggs
Add early lead wall street (x)
Chicago potatoes
NY eggs

NY butter
Undated foreign exchange

Add chicago grain (futures)
Add ny cotton

Chicago livestock
NY bar silver
Lead Wall Street (must A wire)

Add lead grain
Chicago cash grain
Lard, ribs, bellies

NY markets at glance
CX markets at glance
St. Louis cash grain
NY drygoods (x)
New lead wall street (x)
Add new lead wall street (x)

NY cottonseed oil
NY coffee
Cotton table
Tobacco close (must G wire)
Add lead sugar

Add lead cotton
NY rubber

What stocks did
Stock insert

Staple insert
Bond insert

WED NY Iron Age Review
NY Electric power output
THU London bank statement
Paris bank statement
FRI Dun-Brad review
Liverpool weekly cotton
WX carloadings (1st pgh only)
SAT NY weekly drygoods
CX weekly grain
NY weekly financial

(Above 3 may go night or early)

(x)—NOT received Saturdays

SAVE FOR NIGHT
Phila poultry
NY livestock
NY potatoes
Boston wool
Add PX mkt (butter)
NY produce for AMS
(Try to move these, slugged "for ams," on G between 3-4)

NY business indicators

NY weekly clearings
Special add cotton close
Sub NY foreign exchange
NY national business survey

Night matter may start moving both wires at 3 p. m. weekdays and at 2 p. m. on saturdays.

[fol. 427] Sept. 5, 1935.

"C" Wire Day Markets to Locals

Paris dollar
London dollar
London bar silver
London bar gold
Liverpool produce

Montreal silver (Saturday only)
Paris bourse
CX grain table open
CX grain opening
WX Treasury balance
Liverpool cotton & table
London metals
London money
London stocks
NY Wall Street lead (Saturday only)
NY Fgn Mkts at Glance
CX livestock
CX grain purchases

CX Estimated receipts
Savannah naval stores (save for night)

CX grain lead
CX grain table
CX add lead grain
NY What stocks Did (Sat. only)

MONDAYS
NY visible grain
THURSDAYS
London bank statement
Paris bank statement
FRIDAYS
WX Bureau mines oil
BX Com'l Bulletin wool
WX carloadings

Liverpool cotton statistics
SATURDAYS
NY Corporate earnings
NY National Business Survey
VARIABLE
Berlin bank statement
London Board of Trade 15th mo)

BOARD'S EXHIBIT 8—(Continued)

MARKETS FOR Nr, PX and WN

NY New Jersey produce
Temperatures (8.00am column with 7 to IND)
PX produce
PX poultry & cheese
NY potatoes
NY eggs (yellow paper)
Liverpool cotton & table
NY 11.15am stocks (NR only)
London stock list
London naval stores
NY add eggs (yellow paper)
PX eggs
NY 1.30pm stocks (NR only)

FRIDAY

Liverpool cotton statistics
Manchester cloth

[fol. 428] August 15, 1935.

Penn Wire

Day Market Routine

NY Commodity Index
(illegible)
WX Treasury balances
NY Wall St. add opening
NY Stock averages
NY Bond averages
NY Wall St. Briefs
NY Cotton futures opening
NY Rubber futures opening
NY Dressed poultry
NY Wall St. opening
NY Produce
CX Grain opening
NY Butter & cheese
NY Eggs
NY Wall St. early lead

BOARD'S EXHIBIT 8—(Continued)

E. Buffalo livestock
NY Livestock
NY Foreign Mkts. at Glance
CX Livestock
NY Noon stock list
NY Live poultry
NY Bond review
NY Curb review
NY Add eggs
CX Butter & eggs (Return copy for night)
NY Wall St. lead
NY Foreign exchange (use sub on Sats)
NY Cotton futures 2pm.
CX Cash Grain
CX Grain futures (last column only, down to lard)
CX Grain lead (Boughan)
NY Metals (Return copy for night)
CX Grain add lead
NY Wall St. precede
NY Money rates
NY Cotton review (take off lead slug)

[fol. 429] Metropolitan Routine

BUDGET MESSAGE
RADIO DAY BY DAY
HOCKEY RESULTS (NOT SKED)
FIGHTS LAST NIGHT
WRESTLING LAST NIGHT
WHAT CONGRESS IS DOING (TODAY ONLY).
WHAT XGR AT AB DOING
FLASHES OF LIFE (ABOUT 6)
AROUND THE EMPIRE STATE (ABOUT 3)
EASTERN NEW YORK WEATHER
HUDSON RIVER LEAGUE BASKETBALL
MARKETS (MUST BE MOVED TO PU BY 1 P. M., IF AVAILABLE)
TREASURY BALANCE WX
N. Y. PRODUCE AND VEGETABLES (200)
N. Y. EGGS (WITH ADD)
N. Y. BUTTER
N. Y. POULTRY

BOARD'S EXHIBIT 8—(Continued)

BONDS (N. Y. VN) (150)
LEAD WALL ST. (200)
WALL ST. BRIEFS (2 or 3)
PRECEDE WALL ST.
MARKETS USED BY PU AMS (MOVE ANY TIME BEFORE 4 P.M.)
STOCK AVERAGES (WITH INSERT) (NOT USED SATURDAY)
BOND AVERAGES (WITH INSERT) (NOT USED SATURDAY)
N. Y. FLOUR, HAY, ETC. (VN) (NOT USED SATURDAY)
MARKETS AT A GLANCE (N. Y. ONLY)
MONEY RATES (VN)
U. S. GOVT. BONDS

[fol. 430] BOARD'S EXHIBITS 9 AND 10

These exhibits are omitted pursuant to the order of the Circuit Court of Appeals.

BOARD'S EXHIBIT 11

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant.

BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, Northern Division:

Complainant for its bill of complaint against the defendant above named states and alleges:

1. That complainant is now and at all times herein named has been a corporation duly organized and existing [fol. 431] under the laws of the State of New York and is now and at all times herein mentioned has been a resident and citizen of said State of New York and not a resident or citizen of the State of Washington.

2. That defendant is now and at all times herein named has been a corporation organized and existing under the laws of the State of Washington, and having its principal place of business at Bellingham in Whatcom County, in said State of Washington, being in the Northern Division of the Western District of Washington, and is now and at all times herein mentioned has been a resident and citizen of said State of Washington and not of the State of New York.

3. That the damage to which complainant is being subjected by the matters and things hereinafter set forth is in excess of the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs, and the amount involved herein and in controversy herein is in excess of said sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

4. That complainant is a corporate organization and was incorporated in the year 1900 under the Membership Corporations Law, socalled, of the State of New York, and its members have been and are the proprietors or representatives of numerous newspapers, both morning and evening, published throughout the United States; that ever since its said organization, and in accordance with the powers granted by its Certificate of Incorporation, and [fol. 432] pursuant to its by-laws duly enacted, complainant has been and still is engaged in gathering from sources all over the world, by means of its own instrumentalities, by exchange with its members, and by other appropriate means, any and all kinds of information, news and intelligence, telegraphic or otherwise, for the use and benefit of its members, and distributing the same among its members for publication in the newspapers owned or represented by them, under and subject to the provisions of complainant's by-laws.

5. That complainant has its own representatives in every important capital and city in the world; that it also has reciprocal arrangements with many important news agencies in foreign countries for the interchange of news; that complainant has more than twelve hundred (1200) members, each owning or representing a daily newspaper in the United States; that each of these members, as required by said by-laws, supplies to complainant the local news gathered by the newspaper represented by such member; that all news thus collected by complainant is promptly transmitted by wire or telephone or other appropriate means, to its members for publication in their newspapers; that complainant is thus able to assure to its members the prompt collection and transmission of news from every point in the world where any event of importance may occur; that in addition to the great cost of collecting local and foreign news, which complainant thus obtains by interchange with its members and with foreign news agencies, the direct expense of gathering news and intelligence, which it obtains through its own agents, and of transmitting such [fol. 433] news and intelligence to its members, is very great, amounting each year to many millions of dollars; that the cost of obtaining and transmitting such news is equitably divided amongst said members in accordance with provisions of said by-laws.

6. That said service of complainant is of great financial and business importance to its members for the reason that it is practically impossible for any one of such members alone to establish or maintain the organization requisite for collecting all of the news of the world, or any substantial part thereof; that aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it; that said service, or similar service, of world-wide collection of news is essential to the conducting of modern daily newspapers and can be obtained only by some such cooperative organization or system, or by purchase of news from some one or more of various existing news agencies which are privately owned; that aside from the business importance of said service to members of complainant corporation, and newspapers represented by them, said service of complainant, conducted as aforesaid, is of great public importance in

that it provides an issuance of accurate and impartial news service to the public.

7. That the value of such news service thus furnished by complainant to its members largely depends upon the promptness of such service and the accuracy and impartiality of such news, and also upon the requirement that the news of the day shall be transmitted by complainant to [fol. 434] its members earlier than such information can be furnished to other competing newspapers, and that such news or information collected by complainant shall not be furnished to other newspapers which are not represented by members of The Associated Press and do not contribute to the expense of gathering such news; that an essential part of such plan of operation of complainant accordingly is that news collected by it shall remain confidential and secret until its publication has been fully accomplished by all of complainant's members, for the reason that otherwise competing newspapers and other competing news agencies, which bear no part of the cost, would unfairly and inequitably receive the benefit of such service, and such a result would ultimately greatly impair the usefulness of complainant to its members and imperil its existence; that accordingly the by-laws of complainant, to which each of its members agree upon assuming membership, provide that news received through complainant's service is received exclusively for the purpose of publication in the specific newspaper, language and place specified in the member's Certificate, and that the members shall permit no other use to be made of it whatever, and also that no member shall furnish or permit anyone in his employ, or connected with the newspaper specified in the said Certificate, to furnish any of the complainant's news in advance of publication to any person who is not a member, or to furnish even to another member, any news received from complainant which complainant itself is debarred from furnishing to such member, or to conduct his business in such manner that the news [fol. 435] furnished by complainant may be communicated to any person, firm, corporation or association not entitled to receive the same; or to furnish or permit anyone else to furnish to anyone outside of the membership of complainant, any of the news which he is required by the said by-laws to supply to the complainant, including the local news gathered by each member.

8. That the above named defendant, KVOS INC., a corporation, conducts and operates in the City of Bellingham, Whatcom County, Washington, a certain radio station commonly known and referred to as KVOS, which radio station conducts a broadcast daily from 7:00 o'Clock in the morning to 11:00 o'clock in the evening, said broadcast consisting of programs of substantially the same kind and sort as are commonly given from radio broadcasting stations.

9. That as a part and feature of the daily program broadcasted from said radio station three times daily, is conducted what it styles and describes as news broadcasts, or the newspaper of the air; that the first of such news broadcasts each day is conducted from 9:15 to 9:45 o'clock A. M.; the second from 12:15 to 12:45 o'clock, during the noon hour, and the third and last from 7:00 to 7:45 o'clock in the evening; that in each of said broadcasts the defendant, through its servants or agents, proceeds to announce by radio what the defendant claims to be and what in fact usually is, as more fully hereinafter set forth, the leading, most prominent and most interesting news events of the day.

[fol. 436] 10. That there is published at said City of Bellingham a certain newspaper called "The Bellingham Herald," both evening and morning editions, except Monday morning of each week, and a Sunday morning edition thereof, which said newspaper, The Bellingham Herald, is represented by a membership in the complainant and complainant is entitled under provisions of its by-laws aforesaid, to be furnished by said The Bellingham Herald, with all the news of the territory served by said The Bellingham Herald, such territory being determined under the provisions of said by-laws of the Board of Directors of the complainant, and also as provided by said by-laws, said, The Bellingham Herald, agrees not to furnish the news from said territory to anybody not a member of complainant corporation; that there is also published at Seattle, in the County of King, in the State of Washington, said city of Seattle being approximately ninety-three miles distant from the city of Bellingham, certain daily newspapers, namely, Seattle Post Intelligencer, and The Seattle Daily Times, each of which newspapers are represented by memberships in complainant corporation, and as to each of which com-

plainant has the same identical rights with reference to news as herein set forth concerning said The Bellingham Herald.

11. That defendant conducts said news broadcasts as a part of its business of operating and conducting said radio station; that said radio station is a business and enterprise conducted by defendant for profit, the profit being derived by sale of time over said radio station for advertising purposes, to persons, firms and corporations who desire to

[fol. 437] advertise some particular business or product, and to purchase time from said radio station in which to advertise and promote the business or product conducted by such advertising persons, firms and corporations; that the value of such time for advertising purposes over such radio station depends practically entirely upon the popularity of said station, that is, upon the number of persons who commonly and usually listen to the programs broadcasted by such station; that the object and purpose of said news broadcasts by the defendant over said KVOS is to popularize said radio station by making said program interesting through news broadcasts and thereby to induce a greater number of persons to listen to said programs, thereby enhancing the value of time over said broadcasting station for such advertising purposes.

12. That a large, and in most instances the major, portion of the revenue derived by members of complainant corporation is made up of sale of space in said newspapers for advertising purposes; that the value of such advertising space depends largely, if not almost entirely, upon the number of readers that the particular newspaper has, and the number of readers depends practically entirely on the freshness and the interest of the news, intelligence and information contained in said newspaper; that such news ceases to be fresh and of interest after it has become generally known and that what is commonly known and referred to as "news value" of news, intelligence and information is practically destroyed as soon as or shortly after such news, intelligence and information becomes generally known.

[fol. 438] 13. That by virtue of the matters and things hereinbefore stated, defendant, in conducting said radio

station, has become and is a competitor of complainant and the various members of complainant corporation in the obtaining and distribution of news, intelligence and information, and said competition necessarily involves rivalry and business competition in being the first to obtain and distribute news, intelligence and information for the purpose of popularizing and making more attractive the respective advertising mediums.

14. That defendant in conducting and carrying on said competition has not and does not carry on or conduct any organization of its own for the purpose of gathering or obtaining news except as to some local items, as to which complaint is not here made, and does not purchase news from any news agency, but on the contrary regularly and continuously follows the practice of what is commonly known and referred to as "pirating" the news, intelligence and information gathered at great expense by complainant and members of complainant corporation, said practice of pirating being more fully hereinafter set forth and described.

15. That each morning at said broadcast from 9:15 to 9:45 o'clock defendant regularly obtains copies of the morning editions of the said The Bellingham Herald and Seattle Post Intelligencer and systematically reads therefrom the whole or most important paragraphs or parts, sometimes verbatim and sometimes slightly rearranging the wording of the most important and most interesting [fol. 439] news items in said newspapers, including the items furnished to said newspaper by complainant as aforesaid, and also including the items gathered by said newspapers as local news, and all belonging to complainant as aforesaid; that at said broadcast in the evening of each day, except Sunday, from 7:00 to 7:45 o'clock, the defendant regularly obtains copies of the latest editions of said The Bellingham Herald, evening edition, and The Seattle Daily Times, and systematically reads therefrom, sometimes verbatim and sometimes slightly rearranging the wording of the most important and most interesting news items in said newspapers, including the items furnished to said newspapers by complainant as aforesaid, and also including the items gathered by said newspapers as local news, and all belonging to complainant as aforesaid.

16. That said morning edition of said The Bellingham Herald used by defendant as aforesaid, regularly and uniformly contains all of the news, intelligence and information that has been furnished by complainant to said The Bellingham Herald up to the time of publication of said edition, and covers all of the leading, most important and most interesting events in the world during the preceding day and up to the conclusion of business hours of the preceding day, and in fact up to the time of said morning edition of said The Bellingham Herald going to press at approximately 3:30 o'clock A. M. of each day; that the morning edition of the said Seattle Post Intelligencer so used by defendant as aforesaid, includes all of the news furnished by complainant to the said Seattle Post Intelligencer up until 11:30 o'clock in the evening of the day before, and [fol. 440] covers an account of all of the most interesting and most important news in the world up to 11:30 o'clock in the evening of such day; that said evening edition of said The Bellingham Herald used by defendant as aforesaid, regularly and uniformly includes all of the news furnished and owned by complainant to said The Bellingham Herald up to 4 o'clock in the afternoon of each day, and covers all and the most interesting and most important news of the world up to 4 o'clock in the afternoon of that day; that said evening edition of The Seattle Daily Times so used by defendant as aforesaid, regularly and uniformly includes all of the news furnished and owned by complainant to said The Seattle Daily Times up to 10 o'clock in the forenoon of that day, and covers an account of all of the most interesting and most important news in the world up to 10 o'clock in the forenoon of that day; that all of said news has been gathered as aforesaid by complainant at tremendous expense, and solely for the purpose of transmission to its members in the manner and upon the basis hereinbefore set forth; that said respective editions of The Bellingham Herald, both morning and evening, and of Seattle Post Intelligencer, and of The Seattle Daily Times also regularly and uniformly include and contain what is commonly known as "local news", meaning news which has been gathered by the news gathering organizations maintained by said respective newspapers; that as to such local news complainant under the reciprocal arrangements hereinbefore described with said newspapers, is entitled, exclusively of other news gathering or disseminating organizations or

agencies, to receive said local news for transmission to [fol. 441] members of complainant; that said local news is of great value to complainant in that the dissemination of the same to members of complainant is part of the service rendered by the complainant, and constitutes complainant's method of obtaining and disseminating news which arises in the territory served by said respective newspapers.

17. That numerous newspapers represented or included in the membership of complainant circulate to a greater or lesser extent, and have subscribers to a greater or lesser extent, in the territory served by said radio station, which territory extends for a radius of seventy-five to one hundred miles from the said city of Bellingham, depending upon the atmospheric conditions and other conditions affecting radio broadcasting; that a large portion, which portion as complainant is informed and believes, and therefore alleges is not less than sixty per cent of the persons residing within said territory, either own radios or have access to radios, practically all of which persons are actual or potential readers and subscribers of the various newspapers published by members of complainant corporation; that said newspapers are distributed through said territory by various means, including the United States mails, carrier service maintained by said individual newspapers, and other means of distribution; that the circulation and distribution of said newspapers through said territory is practically entirely by means of railroad or motor transportation and as to all points outside of the city, where each newspaper is published, a period of from not less than two (2) or three (3) hours up to twenty-four (24) hours or more necessarily [fol. 442] elapses from the publication of said respective newspapers before the same are delivered to and actually reach the readers and subscribers thereof.

18. That through said practice hereinbefore set forth of pirating said news and broadcasting same, the defendant regularly appropriates news, which has been gathered at great expense, as aforesaid, by complainant, and to which complainant's members are entitled, and throughout said territory served by said radio station broadcasts and makes said news known to the general public several hours in advance of the time when newspapers published by members of complainant corporation can reach actual or potential subscribers thereof; that thereby and by said practice,

defendant, for its own profit, and for enhancement of its own business, in effect, appropriates the product of the efforts and industry of complainant and members of complainant corporation; that by said practice of making said news generally known to the public in said territory before said newspapers can be distributed among the public, said news is, to a large extent, rendered old, stale and uninteresting, and no longer news, and said practice greatly impairs and detracts from the attractiveness of said newspapers, and works a direct and irreparable injury to complainant in complainant's said business and to members of complainant corporation.

19. That for all of the reasons hereinbefore stated, said practice of appropriating and pirating said news is and constitutes unfair competition by defendants as against complainant; that by the aforesaid acts of defendant and by the said practice of the defendant, complainant has been [fol. 443] and is being wrongfully deprived of the just benefits of the labors and expenditures aforesaid on the part of complainant, and members of complainant corporation have been and are being similarly injured; that complainant has also been further prejudiced and is being further prejudiced by dissatisfaction among its members due to the fact that defendant is thus able to spread and disseminate throughout said territory in advance of dissemination by said members, the same identical news which is paid for by said members.

20. That complainant has made frequent requests and demands of defendant that defendant desist from said practice of so pirating said news, and has fully explained, or caused to be explained to defendant all of the matters and things hereinbefore stated, but defendant has uniformly refused to desist from said practice, but proposes to continue with the same and, in fact, does intend to continue the aforesaid practice and will do so unless restrained from so doing.

21. That defendant does not have and has never had the permission of complainant, or any member of complainant corporation, to make use of said news gathered by complainant and its members as aforesaid.

22. That future continuance of said practice on the part of defendant will increasingly cause the aforesaid irre-

parable injury and damage to complainant, in that complainant's effort and expenditures to gather and obtain news will be rendered largely without reward or value so [fol. 444] far as concerns said territory served by said radio station.

23. That complainant is without any speedy, complete or adequate remedy at law, or otherwise, except by interposition of this honorable Court by its Order of Injunction, enjoining and restraining defendant and all of its officers, agents or employees from committing or aiding in, advising or encouraging the commission of any of the acts hereinbefore complained of, and enjoining and restraining continuance of the practice herein set forth; that it is necessary that such injunction issue to prevent the continuance of said acts and of said practice.

Wherefore Complainant prays

First. That the defendant answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and as if the defendant was particularly interrogated in respect thereto.

Second. That a Writ of Injunction may be issued out of and under the seal of this Court to be directed to the defendant and its officers, agents, servants, employees, assigns and successors and all others acting for defendant, and all persons aiding or abetting them, or any of them, and all persons whomsoever, to restrain them perpetually from and after the time they have knowledge of the existence of said Writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts herein described, news gathered and obtained through the labor and expenditure of complainant, or members of complain- [fol. 445] ant corporation, during such period as said news retains and has commercial value as news to complainant and its members.

Third. That a temporary Injunction issue herein to the same identical tenor and effect as with reference to the permanent Injunction herein prayed for, said temporary Injunction to be in full force and effect pending final determination of the issues herein.

Fourth. That the complainant may have such other, further and different relief in the premises as may be deemed just and equitable.

Fifth. That a Writ of Subpoena directed to the defendant may issue, commanding the defendant at a certain day and under a certain penalty, to be therein provided, to be and appear before this Honorable Court, and then and there full, true and correct answer make to this Bill of Complaint (but not under oath, answer under oath being hereby waived) and further stand to perform and abide by such further orders, directions and decrees as said Honorable Court shall deem fit.

And complainant will ever so pray.

C. W. Howard, J. W. Kindall, Attorneys and Solicitors for Complainant, Office and Post Office Address: 206 First National Bank Building, Bellingham, Washington. (16)

[fol. 446] State of Washington,
County of Whatcom, ss:

Harold Turnblad, being first duly sworn on his oath deposes and says: That he is Chief of the Seattle, Washington Bureau maintained by The Associated Press, Complainant in the above entitled action, and as such has charge of and supervision over the news service of said complainant in and throughout Western Washington; that affiant has read the above and foregoing Bill of Complaint, and knows the contents thereof, and has knowledge of the matters and things therein stated; that said Bill of Complaint is true of Affiant's own knowledge, except as to matters therein stated as alleged on information and belief, and as to such matters Affiant believes the same to be true.

Harold Turnblad.

Subscribed and sworn to before me this 13th day of November, 1934. J. W. Kindall, Notary Public in and for the County of Whatcom, residing at Bellingham. (Seal.)

(Endorsed): Filed Nov. 13, 1934.

[fol. 447] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant

AFFIDAVIT

STATE OF WASHINGTON,
County of Whatcom, ss:

J. W. Kindall being first duly sworn, on his oath deposes and says:

That he is one of the attorneys and solicitors for the Complainant herein, and is authorized to make and does make the application hereinafter contained for and in behalf of Complainant.

That the application hereinafter contained is based upon this affidavit, upon the verified Bill of Complaint herein, and upon the affidavits of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit, W. C. Carver, Harold Turnblad, and Frank I. Sefrit which are annexed hereto, said Bill of Complaint and said affidavits being a part of the records [fol. 448] and files herein, and being made a part of this Affidavit the same as if fully and completely set forth herein.

That as fully appears by the specific facts set forth in said Affidavits and in said verified Bill of Complaint, immediate and irreparable loss or damage will result to Complainant unless defendant is restrained, pending hearing on application for a temporary injunction herein, from following the practices complained of herein; that as appears from said Bill of Complaint and from said Affidavits, daily increasing and immediate and irreparable loss or damage is being caused to Complainant by the carrying on of said practice by Defendant, and further immediate and irreparable loss and damage will occur to Complainant unless said practice is forthwith restrained; that it is necessary, pending final determination hereof, that a temporary in-

junction issue herein out of and under the seal of this Court, to be directed to the Defendant and its officers, agents, servants, employees, assigns and successors, and all others acting for the Defendant, or any of them, to restrain them from and after they have knowledge of the existence of said writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of Complainant or members of Complainant during such period as such news retains and has commercial value as news to Complainant and its members; that such news does have such commercial value under the conditions set forth in the Bill of Complaint herein for a period of not less than [fol. 449] twenty-four (24) hours after its first publication by members of the Complainant corporation; that it is further necessary to prevent immediate and irreparable damage and loss to Complainant that pending hearing on said application for a temporary injunction that a temporary restraining order issue herein, restraining the Defendant, its officers, agents, servants, employees, assigns and successors, and all others acting for the Defendant, from pirating, appropriating, using or disseminating to the general public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of the Complainant or members of the Complainant corporation during such period as said news retains and has commercial value as news to Complainant and its members, being during said period of not less than twenty-four (24) hours from first publication thereof as aforesaid.

Wherefore, Complainant prays that pending final determination hereof, a temporary injunction may be issued out of and under the seal of this Court, to be directed to the Defendant and its officers, agents, servants, employees, assigns and successors, and all others acting for Defendant, enjoining and restraining them from and after the time they have knowledge of the existence of said writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of Complainant or members of Complainant corporation, either bodily, or by ex-

[fol. 450] cerpts, by rearrangement, or after rewriting it, during such period as such news retains and has commercial value as news to Complainant and its members, being for a period of not less than twenty-four (24) hours after first publication of such news in a newspaper published by a member of Complainant corporation; and Complainant further prays that pending hearing upon such application for such temporary injunction that a restraining order issue herein to the same identical tenor and effect as with reference to the temporary injunction herein prayed for.

J. W. Kindall.

Subscribed and sworn to before me this 10th day of November, 1934. Harold Lamb, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

[fol. 451] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant

AFFIDAVIT

STATE OF WASHINGTON,
County of Whatcom, ss:

Frank I. Sefrit, being first duly sworn, on his oath deposes and says:

That he is now and at all times herein named has been General Manager of a daily newspaper published in Bellingham, Washington, known as The Bellingham Herald, referred to in the Bill of Complaint herein, and in charge of the business and affairs thereof; that said The Bellingham Herald is the only newspaper in Bellingham, Washington, which has membership in the Complainant herein and said The Bellingham Herald has never in any manner whatsoever given permission to defendant herein to broadcast or an-

[fol. 452] nounce any news appearing therein, whether pro-

cured by said The Bellingham Herald through its own sources or through Complainant or otherwise, but has on the contrary strongly objected to the practices being pursued by said defendant radio station as set forth in the Bill of Complaint herein, and that the defendant has persisted in said practice in spite of said objections.

Frank I. Sefrit.

Subscribed and sworn to before me this 10th day of November, 1934. J. W. Kindall, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant

[fol. 453] AFFIDAVIT

STATE OF WASHINGTON,
County of King, ss:

Harold Turnblad, being first duly sworn, on his oath deposes and says:

That he is the Chief of the Associated Press Bureau, maintained by the Complainant above named, at Seattle, Washington, and as such Chief of such Bureau is in charge and supervision of the news service of Complainant in the State of Washington.

That Affiant knows and is familiar with the By-Laws of Complainant, and has in his possession a printed copy thereof, that the same are as set forth and described in the Bill of Complaint herein.

That Article 8, Sections 3, 4, 5, 6, and 7 of said By-Laws read as follows:

To receive and furnish news.

"Sec. 3. Each member shall take the news service of the Corporation and publish the news regularly in whole or in

part in the newspaper named in the Certificate of Membership. Each member shall also promptly furnish to the Corporation, through its agents or employees, all the news of such member's district, the area of which shall be determined by the Board of Directors.

What news to be furnished

[fol. 454] "Sec. 4. The news which a member shall furnish as herein required shall be all such news as is spontaneous in its origin, but shall not include any news that is not spontaneous in its origin, or which has originated through deliberate and individual enterprise on the part of such member or of the newspaper specified in such member's certificate of membership.

To guard news report

"Sec. 5. No member shall furnish, or permit any one in his or its employ or connected with the newspaper specified in his or its certificate of membership to furnish, to any person who is not a member, the news of the Corporation in advance of publication, or to another member any news received from the Corporation which the Corporation is itself debarred from furnishing to such member, nor conduct his or its business in such a manner that the news furnished by the Corporation may be communicated to any person, firm, corporation or association not entitled to receive the same.

Sale of news by members

"Sec. 6. No member shall furnish, or permit any one to furnish, to any one not a member of this Corporation, the news which he or it is required by the By-Laws to supply to this Corporation.

"Sec. 7. Members shall print in their newspapers such [fol. 455] credit to the Corporation, or to any paper or other source from which news may be obtained, as shall be required, from time to time, by the Board of Directors."

That Article 7, Sections 2, 4, 5, 6 and 8 of said By-Laws read as follows:

Receipt of news Service

"Sec. 2. Each member shall be entitled, upon compliance with the provisions of the By-Laws, to receive a service of

news for the purpose of publication in the newspaper specified in such member's certificate of membership and for that purpose only. The nature and extent of the news service to be so received by the member shall be determined by the Board of Directors, upon the member's admission, and the initial dues or assessment shall be fixed at the same time and by the same authority, subject, however, to change as hereinafter provided in Article IX.

Who may receive news

"Sec. 4. The news service of this corporation shall be furnished only to the members thereof, or to the newspapers owned by them and specified in their certificates of membership.

Use of News

"Sec. 5. A member shall publish the news of The Associated Press only in the newspaper, the language and the [fol. 456] place specified in such member's certificate of membership and shall not permit any other use to be made of the news furnished by the Corporation to the newspaper which such member owns. Only the place specified in the certificate of membership shall appear in the title, name or heading of the newspaper where the news of The Associated Press is published.

Hours of Publication

"Sec. 6. The time limits for the receipt and publication of news by members shall be (standard time in all cases at the place of publication) as follows: Morning papers to receive not later than 9 A. M. and to publish not earlier than 9 P. M., except that for editions to be circulated only outside of the city of publication not earlier than the following morning, morning papers may publish not earlier than 5 P. M. and that Sunday editions so published may be circulated in the city of publication after 8 P. M. Saturday; afternoon papers to receive not later than 6 P. M. and to publish not earlier than 9 A. M., the service to afternoon papers between 4 P. M. and 6 P. M. to be of bulletin character; provided, that the Board of Directors may authorize that upon extraordinary occasions The Associated Press dispatches may be used in extra editions or for bulletins outside of the hours named.

Association to protect news

[fol. 457] "Sec. 8. No news furnished to the Corporation by a member shall be supplied by the Corporation to any other member publishing a newspaper within the district which the Board of Directors shall have described in defining the obligations of such member to furnish news to the Corporation."

That under date of December 13, 1933, Complainant, through Kent Cooper, its Secretary, caused to be sent to Mr. Rogan Jones, Manager of defendant radio station at Bellingham, Washington, by United States mail, a letter, a true copy of which is hereto attached marked "Exhibit A" and by this reference made a part of this affidavit, and that under date of September 27, 1934, affiant sent by registered United States mail from Seattle, Washington, to Mr. Rogan Jones, Manager of defendant radio station, at Bellingham, Washington, a letter, a true copy of which is as set forth in "Exhibit B" hereto attached and by this reference made a part hereof, which letter defendant duly received; that the Complainant has given no permission to defendant to use or broadcast any of the news to which Complainant is entitled, whether the same be gathered by its own news sources from outside the district surrounding the City of Bellingham or Seattle, or whether it be local news gathered by any of Complainant's members.

Harold Turnblad.

Subscribed and sworn to before me this the 13th day of November, 1934. J. W. Kindall, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

[fol. 458] "Exhibit A"

December 13, 1933.

Via Airmail. (Registered)

Mr. Rogan Jones, Manager, Radio Station KVOS, Bellingham, Wash.

Dear Sir:

We have information that Associated Press news and local news to which The Associated Press is exclusively entitled is being taken by your station from newspapers which

are members of The Associated Press in your section, and utilized by you for news broadcasting purposes.

This is formal notice that you do not have the right to do this and that the practice must be discontinued. The Supreme Court of the United States has held that The Associated Press has a property right in its news and it may not be republished by anyone without the consent of The Associated Press so long as it has news value.

In a recent suit against a radio station at Sioux Falls, S. D., which was doing just what you are doing, The Associated Press in Federal Court has been granted an injunction against the station. In case you decline to acquiesce promptly in this demand that you cease use of any news of The Associated Press or the local news of Associated Press newspapers, we shall have to proceed legally against you.
[fol. 459] Kindly acknowledge receipt with assurances you will discontinue.

Sincerely yours, —— ——, Secretary, The Associated Press.

Kent Cooper—M.

"Exhibit B"

Sept. 27, 1934.

By Registered Mail.

Mr. Rogan Jones Manager, Radio Station KVOS, Bellingham, Wash.

DEAR SIR:

This is to reiterate our objection to the unauthorized use by station KVOS of Associated Press news from Bellingham and other newspapers. We have been reliably informed that the offense has continued despite a warning from our General Office in New York in an airmail letter dated December 13, 1933.

In that letter, Kent Cooper, Secretary of The Associated Press, wrote you as follows:

"We have information that Associated Press news and local news to which The Associated Press is exclusively entitled is being taken by your station from newspapers which are members of The Associated Press in your section, and utilized by you for news broadcasting purposes.
[fol. 460] "This is formal notice that you do not have the right to do this and that the practice must be discontinued.

The Supreme Court of the United States has held that The Associated Press has a property right in its news and it may not be republished by anyone without the consent of The Associated Press so long as it has news value.

"In a recent suit against a radio station at Sioux Falls, S. D., which was doing just what you are doing, The Associated Press in Federal Court has been granted an injunction against the station. In case you decline to acquiesce promptly in this demand that you cease use of any news of The Associated Press or the local news of Associated Press newspapers, we shall have to proceed legally against you."

Please acknowledge receipt of this, the second notice, with assurances you will discontinue.

Sincerely, Harold Hurnblad, Chief of Bureau.

[fol. 461] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant.

AFFIDAVIT

STATE OF WASHINGTON,
County of Whatcom, ss:

Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit and W. C. Carver each being duly sworn on his oath deposes and says, each for himself and not one for the other:

That affiant Hallock E. Reeves is now and at all times herein named has been night-editor of The Bellingham Herald, employed thereon as such, the said The Bellingham Herald being the same newspaper referred to in complainant's bill of complaint, and published in Bellingham, Washington;

The said Charles L. Sefrit, that he is now and at all times herein named has been Business Manager of the said The Bellingham Herald;

[fol. 462] The said Ben H. Sefrit, that he is now and at all times herein named has been Reporter on said The Bellingham Herald;

The said W. C. Carver, that he is now and at all times herein named has been editor of the said The Bellingham Herald.

That affiant is familiar with the wave length used by radio station KVOS, being the radio station KVOS referred to in said bill of complaint, and affiant has frequently and for a period of several years listened to programs broadcasted from said radio station and is familiar with the voices of the various announcers over said radio station; that in each instance hereinafter set forth when affiant listened to said broadcasts, affiant obtained the same on the radio used by affiant in Bellingham, Washington, through the exact wave length for obtaining said radio station, and recognized the voice of the announcer as an announcer for said radio station, and knows of his own knowledge that on each of said occasions affiant was listening to a broadcast from said radio station KVOS;

That affiant Charles L. Sefrit listened to a socalled news broadcast from said radio station on the following dates in the year 1934: April 12 and 18; May 5, 10, 14, 17 and 31; August 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 20, 21, 23, 27 and 29; September 3, 4, 6, 8, 10, 13, 17, 18, 21, 22, 24, 25 and 29; October 8, 10, 18 and 25, and November 5;

That affiant Hallock E. Reeves listened to the socalled news broadcast from said radio station on the following, among other dates, in the year 1934: April 30; May 1, 2, 4, 15, 18, 21, 23, 30; June 1, 2, 4, 11, 17 and 18; October 11, 16, 23 and 24; November 2 and 7;

[fol. 463] That affiant Ben H. Sefrit listened to the socalled news broadcast from said radio station on September 28, 1934;

That affiant W. C. Carver listened to the socalled news broadcast from said radio station on August 24, 1934;

That affiants Charles L. Sefrit and Hallock E. Reeves listened to the socalled news broadcast from said radio station in the year 1934 on August 15, and 16; October 1, 12. 15, 17, and 22, and November 8.

That in reading the articles hereinafter set forth and referred to said announcer in each instance read from Associated Press dispatches, or from local news in the

newspapers hereinafter mentioned, belonging to the Associated Press, in some instances reading verbatim either the whole of said articles or the most interesting portions thereof, including the details of said articles; that in some instances affiant would tune in the radio on which affiant was listening, to the wave length of said radio station KVOS, at the time when the announcer of said radio station would be reading said articles, which were verbatim and would thereafter continue verbatim, reading verbatim from such Associated Press articles, thus showing and indicating that said announcer had prior to the time when affiant would tune in said radio been reading from such Associated Press dispatches or news; that in some instances in the body of the article the dispatch as published and printed in the particular newspaper from which said announcer might be so reading would credit the news article to the Associated Press in words such as and similar to "According to the Associated Press" or "The Associated Press [fol. 464] reports", which language just quoted said announcer would omit in his broadcast of said articles so containing said words.

For the morning broadcast from said radio station from approximately 9:15 to 9:45 o'clock the announcer of said radio station would regularly procure the morning edition of said The Bellingham Herald and said Seattle Post Intelligencer, referred to in complainant's bill of complaint herein, and for the evening broadcast of said radio station from about 7:00 to 7:45 o'clock the announcer for said radio station would regularly procure the evening copies of the evening edition of the said The Bellingham Herald and The Seattle Daily Times, all of which newspapers are mentioned and referred to in complainant's bill of complaint, and all of which newspapers carry regularly published dispatches from the Associated Press and carry local news belonging to the Associated Press; that in each edition of said The Bellingham Herald the following is carried in a prominent place on the editorial page thereof:

"Member of the Associated Press

The Associated Press is exclusively entitled to the use for reproduction of all news dispatches credited to it or not otherwise credited to this paper, and also the local news published therein."

and likewise in The Seattle Daily Times is carried the following:

"Member of Associated Press

The Associated Press is exclusively entitled to the use [fol. 465] for publication of all news dispatches credited to it, or not otherwise credited, in this paper, and also the local news published here."

and likewise, except on an advertising page in Seattle Post Intelligencer, is carried the following:

"Member of The Associated Press

The Associated Press is exclusively entitled to the use for republication of all news dispatches credited to it or not otherwise credited in the paper, and also the local news published herein."

That affiant has been engaged in the newspaper business for many years prior to the date hereof and is familiar with the rules and practice of newspapers, and particularly of the newspaper aforesaid with reference to crediting the source of news and publishing the same; that in each instance in said newspapers where there appears a date line with the letter "(AP)" this means that the item in question was procured from, furnished and owned by the Associated Press, complainant herein, and where in the body of the article the dispatch or news item is credited to The Associated Press with language to that effect, or in substance the same, this means that such item in question was likewise procured from, furnished and owned by The Associated Press, the complainant herein, this being a regular and uniform custom and practice followed by said newspapers at all times mentioned in the bill of complaint herein; that where there is no credit emphasized as above stated to The Associated Press or other News Agency, or to some special writer, this indicates that the item was [fol. 466] procured by the newspaper itself through its own force of news gatherers and constitutes "Local News" owned by The Associated Press, complain-t herein; that in some instances said radio station KVOS in a manifest and abortive attempt to disguise the pirating of said news as alleged in the bill of complaint herein, would endeavor to change or rewrite said Associated Press dispatches or

news, instances of which are hereinafter set out, but that in each instance sufficient of the exact wording, sequence and general scheme of said dispatches and news would be copied and used by the announcer as to plainly indicate the pirating of said article as announced from the dispatches and news of complainant; that in some instances said announcer would read from a socalled Summary of the news compiled by Seattle Post Intelligencer and would preface the reading of such summary by the announcement that later during the broadcast detailed stories of the Summary would be broadcast, and the announcer would thereafter broadcast the details verbatim from Associated Press dispatches and news in said newspaper carrying said Summary thereof;

That when affiants listened to said broadcasts from said radio station as aforesaid, the announcer from said radio station read articles as follows from the respective newspapers indicated, and the particular affiant listened to said broadcast is indicated by his initials; that where said announcer may have read verbatim from any of said articles they are hereinafter set out without any explanatory item, and when said announcer may have interposed or changed the article from which the broadcast was attained or may have rewritten the same, then that particular fact is respectively hereinafter indicated, and in each of the follow- [fol. 467] ing instances the broadcasts were listened to from said radio station on the date mentioned by the particular affiant whose initials are set forth in connection with each respective article hereinafter set out, from the respective newspaper, and on the respective date (in the year 1934) respectively mentioned, and if the article is from an Associated Press dispatch it is marked either "(AP)" or in language credited to The Associated Press, and if local news belonging to The Associated Press is marked "Local".

Each of the following instances are broadcast from said radio station on the dates mentioned, taken from the respective papers mentioned, and the broadcast as made was compared with the respective articles in such papers by the particular affiant whose initials appear at the head of said respective item.

(Here follows, verbatim, news items so broadcast by dedendant).

Affiant also listened to other broadcasts from said radio station which are not set forth herein, but which can be produced as additional proof herein if desired.

Hallock E. Reeves. Charles L. Sefrit. Ben H. Sefrit. W. C. Carver.

Subscribed and sworn to before me this the 10th day of November, 1934. J. W. Kindall, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

(Endorsed): Filed Nov. 13, 1934.

[fol. 468] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant

REBUTTAL AFFIDAVIT OF HAROLD TURNBLAD

STATE OF WASHINGTON,
County of Whatcom, ss:

Harold Turnblad on oath says: That he is Chief of the Associated Press Bureau maintained by complainant above named at Seattle, Washington, and as such Chief of such Bureau is in charge and supervision of the news service of complainant in the State of Washington.

That affiant has read the motion of defendant's attorneys to dismiss bill of complaint, as well as affidavit of Rogan Jones resisting application for temporary injunction herein, as well as affidavit of L. H. Darwin in the same connection; that as to the question of nonjoinder raised in defendant's [fol. 469] said motion to dismiss, affiant shows that the absolute ownership of the news which was being appropriated by defendant is in the complainant above named and that none of the newspapers to which it sells said news has any right in itself to sell the same or to permit the defendant to appropriate or use the same, even with said newspapers' consent as against the objections of complainant; furthermore, in the territory served by the radio station

operated by defendant there are numerous newspapers other than those heretofore mentioned taking complainant's news service and it is for the general protection of complainant's service to all of said newspapers and also for the purpose of maintaining its own organization and entity that this action is brought and there is no fraudulent non-joinder or failure to make other persons parties to this action whatsoever; that The Bellingham Herald is the only paying member of complainant in the City of Bellingham and that complainant used the services of the staff of said The Bellingham Herald in acquiring the evidence which is set forth as a showing herein, solely because the members of such staff were experienced, able and competent in that respect.

That as to the objection that the amount in controversy does not exceed the sum of Three Thousand Dollars, exclusive of interest, affiant shows to the Court that the annual expense to complainant of gathering news for sale to its members, including the newspapers in the district served by this Bureau, and also in the District served by the radio station operated by defendant, is several million dollars, and that the payments made by newspapers for said news [fol. 470] sold to them by complainant in the territory served by said radio station is upwards of $8000.00 per month, which is being imperiled and jeopardized by the acts of defendant as set out in the records and files herein by its unlawful and wrongful appropriation of complainant's news, and said sum greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, and complainant is in danger of losing said memberships and payments if defendant's practices in respect to pirating said news is not enjoined.

That the sole concern of complainant is defendant's use of news furnished by complainant to member newspapers or news to which complainant is entitled under its reciprocal arrangements with member newspapers described in the bill of compla-nt herein and that complainant is not concerned and seeks no remedy as to any news that may be gathered by defendant through its own efforts or which may be otherwise acquired by defendant, and the question of defendant's acquiring news through sources other than complainant is not an issue in this proceeding.

That as to complainant or any of its member newspapers endeavoring to establish a monopoly in news, affiant states that there is no such thing as a monopoly of news; that every organization has the right to gather news by its own expenditure of time, effort and money and that there are at least three news services, international and national in aspect, which sell news to other newspapers and other agencies in the territory served by the radio station operated [fol. 471] by defendant, and that there are news services which sell news to radio stations for broadcasting, any one of which is available to defendant upon terms to be mutually agreed upon between defendant and any of such news services, but that this does not concern the issue here presented, and as to news which may be gathered by defendant and broadcast by defendant over its said radio station other than the news so owned by complainant, this complainant makes no complaint, its sole application for remedy herein being only to restrain defendant from appropriating the news so gather- by and/or owned by complainant; that on page "3" of said affidavit of Rogan Jones is mentioned the news of the Longshoremen's strike in Seattle, San Francisco and the Pacific Coast Cities last summer as having been received from sources other than complainant's service. As refuting defendant's claim to such effect affiant refers to the news broadcast set out in respect to said strike as appears in the affidavit of Messrs. Reeves, Sefrit, et al., sworn to November 10, 1934, and also to their rebuttal affidavit setting out the specific newspaper articles, and invites a comparison thereof which will establish complainant's claim that such broadcasts were manifest piracy of complainant's news.

As to defendant's statement that its station does not make any charge to the public for its broadcasts, affiant states that said defendant has filed with the proper authorities at Washington, D. C. its schedule of rates for advertising when such advertising is inserted in the course of its news broadcasts, as well as rates for advertisting when not given during the course of such broadcasts, and it appears there- [fol. 472] from that the charges to such advertisers during the time that such news broadcasts are given is greater than at other times when such advertising is given over said radio station, thus showing that defendant capitalizes the

interest which it attempts to create by broadcasting news and inserting during the course thereof such advertising.

As to defendant's suggestion that independent authors on a common subject may contain the same thought, sentiments and ideas, affiant simply calls attention to the exact duplication of language and words in the broadcasts of defendant in instances where it pirated and appropriated the news articles of complainant from the newspapers referred to and as set out in the affidavits made a part of this record.

That complainant brings this action in good faith for its own protection in preserving the value of its news so gathered by it for its members; otherwise to permit defendant or other persons or institutions so minded to appropriate any of complainant's news while the same is fresh and constitutes news of salable value would be to abolish the value of complainant's news and render impossible the sale thereof and would in its final analysis result in the virtual destruction of complainant as a news gathering agency, and that complainant in good faith many times prior to the institution of this action caused interviews to be had in its behalf with various members, officers and employees of defendant, including said Rogan Jones, explaining complainant's position and rights and endeavoring to obtain [fol. 473] defendant's cooperation, but defendant has persisted in its piracy of complainant's news and this action is only brought as a last resort in good faith and in protection of complainant's rights as set forth and claimed in the records and files herein.

Harold Turnblad.

Subscribed and sworn to before me this 1st day of December, 1934. J. W. Kindall, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. 1087

THE ASSOCIATED PRESS, a Corporation, Complainant,

vs.

KVOS, INC., a Corporation, Defendant

REBUTTAL AFFIDAVIT OF CHARLES L. SEFRIT AND BEN H. SEFRIT

STATE OF WASHINGTON,
County of Whatcom, ss:

Charles L. Sefrit and Ben H. Sefrit on oath each for himself and not one for the other, says:

[fol. 474] That on November 14, 1934 in Bellingham Washington, affiant listened to a socalled broadcast over Radio Station KVOS in Bellingham, Washington, operated by defendant over the usual wave length of said station; that each of said affiants are familiar with the voices of the ones who broadcast at that time and recognized the voice of one L. H. Darwin as making such broadcast; that during the course of such broadcast on said date at approximately 7 P. M. said Darwin broadcast over said radio station, verbatim, portions of two separate news items from The Seattle Daily Times, Edition No. 6 of November 14, 1934; that said news articles as they appeared in said newspaper are hereinafter set out and the portions of the bodies of said articles to hereinafter set out which are capitalized are the respective portions thereof which were so broadcast by the said L. H. Darwin: ●

●

THE SEATTLE DAILY TIMES—#6, November 14, 1934—Page 3, Col. 6.

C.L.S.
B.H.S.

SEVERYNS WINS SHERIFF RACE BY 531 VOTES

WILLIAM B. SEVERYNS WAS ELECTED KING COUNTY'S SHERIFF FOR THE NEXT FOUR-YEAR TERM, GIVING DEMOCRATS A CLEAN SWEEP OF ALL COUNTY OFFICES, THE KING COUNTY ELECTION BOARD ANNOUNCED LAST EVENING ON [fol. 475] COMPLETING ITS CHECK OF VOTES, INCLUDING 1,137 ABSENTEE BALLOTS.

SEVERYNS WON OVER WILLIAM H. SEARS, REPUBLICAN NOMINEE FOR THE OFFICE, BY THE NARROW margin of 531 VOTES OUT OF THE 136,471 BALLOTS CAST IN THE RACE.

The total vote in the sheriff's race; after the absentee votes were added in, was: Severyns, 68,501; Sears, 67,970.

It was the closest King County race in the memory of County Auditor George A. Grant and other election officials.

Sears received a majority of the absentee votes, 738 to Severyns' 633, but this was not enough to overcome the 636 lead which Severyns received in the votes counted last week.

(The exact transcript of the above item as broadcast over KVOS Wednesday, November 14, 1934, at 7 o'clock P. M. follows:)

Seattle: William B. Severyns was elected King County's sheriff for the next four-year term, giving the Democrats a clean sweep of all county offices, the King County Election Board announced on completing its check of votes, including 1,371 absentee ballots.

Severyns won over William H. Sears, Republican nominee for the office, by the narrow majority of 531 votes out of the 136,471 ballots cast in the race.

[fol. 476] THE SEATTLE DAILY TIMES—#6, November 14, 1934—Page 26, Col. 6.

(Part 2.) C.L.S.
B.H.S.

MORE DAIRIES FACE CHARGES IN CODE FIGHT

WHILE ONE SMALL DAIRY SOUGHT RELIEF IN THE COURTS YESTERDAY FROM "CRACK-DOWN" TACTICS OF THE STATE DEPARTMENT OF AGRICULTURE, DIRECTOR OF AGRICULTURE WALTER J. ROBINSON MOVED AGAINST FOUR OTHER DAIRIES AND THE CUDAHY PACKING COMPANY OF SEATTLE, CITING THEM FOR SELLING MILK AND BUTTER BELOW MARKETING AGREEMENT PRICES.

The Cudahy company must show cause at a hearing set for November 26 at Olympia, why its Agricultural Adjustment Act license should not be revoked for selling butter at 2 cents a pound below prices fixed by the state butter code.

The Gold Medal and Qualitee Dairies in Seattle, Noble & McClurg, Bellingham, and the Evergreen Dairy, Olympia, also were cited for price-cutting, Associated Press dispatches reported.

The Olympia and Bellingham dairies had hearings at Olympia yesterday. Hearing for the Gold Medal Dairy was set for Seattle today, and for the Qualitee Dairy in Olympia November 20.

Their license revoked and their stall in the Pike Place [fol. 477] Market forbidden to handle dairy products, Mr. and Mrs. John Bachman prepared to carry their dispute with the Agriculture Department to the courts. Attorney Clarence W. Pierce was retained by the Bachmans and intended to confer with Director Robinson.

"This case has gone beyond the question of code prices," Attorney Pierce commented. "These people are now prevented from doing business. Unless their license is restored their creditors will foreclose and the Bachmans will lose their farm and herd. It will be just another case for the breadline."

If Robinson does not order the license restored, the case will be taken to the courts and the constitutionality of the code prices will be attacked, Pierce said.

The Bachmans, who own a herd of Jerseys and Guernseys near Renton, protested that the efforts of eighteen years of farming will be wiped out if their business is closed. They had been selling whipping cream at 25 cents a pint, 4 cents under the price fixed by the state.

The state enforced price was raised today to 32 cents, but Bachman said 20 cents would be a fair price and still allow him a good margin of profit.

W. V. Robb, manager of the Seattle milk industry board and state code administrator, said the Bachmans had been given a fair hearing and were warned several weeks ago that they had to boost the price of cream. The Bachmans say they must sell at lower prices in the market to compete with dairies and stores which deliver.

(The exact transcript of the above item as broadcast over KVOS Wednesday, November 14, 1934 at 7 o'clock P. M. follows:)

[fol. 478] Seattle: While one small dairy sought relief in the courts yesterday from "crack-down" tactics of the State Department of Agriculture, Director of Agriculture, Walter J. Robinson moved against four other dairies and the Cudahy Packing Company of Seattle citing them for selling milk and butter below marketing agreement prices.

And we told you about that on our broadcast last night.

• • • • • • •

that by each of the aforesaid broadcasts the defendant and the said L. H. Darwin are guilty of contempt of the temporary restraining order theretofore issued from the above entitled Court and served upon said defendant and the said L. H. Darwin, and emphasizes the necessity of a preliminary injunction to be issued herein.

Charles L. Sefrit. Ben H. Sefrit.

Subscribed and sworn to before me this the 30th day of November, 1934. J. W. Kindall, Notary Public in and for the State of Washington, residing at Bellingham. (Seal.)

(Endorsed): Filed Dec 3, 1934.

[fol. 479] UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, Edgar M. Lakin, Clerk of the United States District Court in and for the Western District of Washington, do hereby certify that the annexed and foregoing is a true and full copy of the original Bill of Complaint, Affidavit of J. W. Kindall, Affidavit of Frank I. Sefrit, Affidavit of Harold Turnblad, (together with exhibits A and B attached), Affidavit of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit and W. C. Carver, dated November 10, 1934, (exclusive of News Items therein contained); Rebuttal Affidavits of Harold Turnblad, and Charles L. Sefrit and Ben H. Sefrit, in Cause No. 1087, The Associated Press, a corporation, Complainant, v. KVOS, Inc., a corporation, Defendant, now remaining among the records of the said Court in my office.

[fol. 480] In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Seattle, this 9th day of January, A. D. 1936.

Edgar M. Lakin, Clerk, by Truman Egger, Deputy Clerk. (Seal.)

[fol. 481] BOARD'S EXHIBIT 12

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the Declaration, in the Matter of the Trade Mark Registered to The Associated Press, December 5, 1933, Number 308,419.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this seventh day of December, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and sixtieth.

Conway P. Coe, Commissioner of Patents. (Seal.)

Attest: D. Erbelson, Chief of Division.

[fol. 482] STATE OF NEW YORK,
County of New York, ss:

Jackson S. Elliott, being duly sworn, deposes and says that he is the assistant secretary of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several states of the United States; that the drawing presented truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the articles.

Jackson S. Elliott.

Subscribed and sworn to before me, a notary public, this 1st day of August, 1933. M. F. Moran, Notary Public. Notary Public No. 212, New York County Register's No. 4M489. Commission expires March 30, 1934. (Seal.)

(Stamped)—Received—Dec. 9, 1935—Regional Office—District 2.

[fol. 483] BOARD'S EXHIBIT 13

Department of Labor

Washington, November 22, 1935.

I hereby certify that the annexed is a true copy of the original data on file in the Bureau of Labor Statistics.

(Signed) Isador Lubin, Commissioner of Labor Statistics (Official title).

Office of the Secretary

I hereby certify that Isador Lubin who signed the foregoing certificate, is now, and was at the time of signing,

Commissioner of Labor Statistics and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this 22nd day of November one thousand nine hundred and thirty-five.

Frances Perkins, Secretary of Labor. (Seal.)

[fol. 484] U. S. Department of Labor,

Bureau of Labor Statistics

Washington

Strikes and Lockouts in the Newspaper and Periodical Printing Industry in 1934, and in January to July, Inclusive, 1935, by Major Issues Involved[1]

Major Issues	1934			1935 (Jan.—July, Incl.)		
	Number of strikes and lockouts	Number of workers involved	Man-days of idleness	Number of strikes and lockouts	Number of workers involved	Man-days of idleness
Total	18	2,654	23,615	13	495	3,792
Wages and Hours	11	2,356	17,551	4	149	483
Wage increase	9	2,331	17,286	2	87	261
Wage decrease	2	25	265	1	49	196
Wages and other causes	..	.....	.....	1	13	26
Organization	7	298	6,064	9	346	3,309
Recognition	1	90	360	..	...	.....
Recognition and wages	1	87	783	2	58	58
Recognition, wages and hours	1	19	19	1	30	393
Recognition and other causes	..	.....	.....	1	6	18
Closed shop	1	9	9	..	...	.....
Violation of agreement	..	.....	.....	1	12	1,368
Discrimination	3	93	4,893	4	240	1,472

[1] Figures in this table are exclusive of strikes and lockouts which involved fewer than 6 workers or which lasted less than one day.

(Stamped)—Received—Dec 9 1935—Regional Office—District 2.

[fol. 485] BOARD'S EXHIBIT 14

Private Circular

The Associated Press, 383 Madison Avenue, New York, City

December 31, 1932.

To the Members:

The assessment plan which was first applied to the revision of assessments based upon the census of 1920 has been retained for the revision based on the census of 1930. It has been found to produce a method of arriving at an assessment which will most nearly approximate the equitable amount each member shall contribute toward the expense of the organization in accordance with the opportunity in the field in which his membership exists.

Again for this revision as in the revision of 1922 there is no increase in the revenue of the organization apportioned; the present revenue is merely redistributed, the fundamental unit of distribution costs being the population as shown by the federal census of 1930. Uniformly the population assigned to each city is that of the city itself and the territory embraced within a radius of ten miles thereof. There are no exceptions. This ten mile radius is deemed the home field.

The elements which go to make up the assessment of each member receiving a leased wire service are:

(a) Wire charge.

(b) Local charge.

[fol. 486] (c) General charge.

(d) Second wire, financial wire and other supplementary wire charges.

(e) State news collection charge.

(f) News photo, feature and other special service charges.

The method of arriving at each of the six elemental charges is here outlined.

(a) Wire Charge

Each city served must have at least one wire to bring to it and carry from it the news of the world. As it mani-

festly is impossible successfully to operate a single wire connecting all of The Associated Press cities of the United States it becomes necessary to arrange circuits that may efficiently serve the various parts of the country. Taking each state as a unit it is possible to operate a state circuit connecting the various cities therein, but to give a comprehensive news service it also is necessary to have trunk circuits to link together the several state circuits. As the state units could not receive a comprehensive news service without the existence of these trunk lines this plan assesses as a wire charge to each state the proportion of the cost of the trunk circuit that serves it and the entire cost of the state circuit where one exists. If the membership within a state does not justify a state circuit regional circuits embracing two or more states are established and the costs of [fol. 487] such circuits are assessed directly against the cities served. The state wire charge is distributed according to population so that each city within a given state pays the same wire rate per 1000 of population.

The wire charge is applied to evening and morning fields on the actual cost basis paid to telegraph companies. The wire charge includes also the salaries of sending operators and filing editors.

(b) Local Charge

The local charge is the rental charge of the automatic printers required to deliver the news service to each city.

(c) General Charge

Expenses of the organization not specifically covered otherwise, such as the entire foreign service the general domestic service and the expenses of administration, are provided for in the general charge. The general charge in each state is allotted to and assessed against each state according to literate population and newspaper development in each state, the latter being evidenced by the total daily newspaper circulation in each state as shown by records of the Post Office Department. The population is that of the last federal census. Seventy-five percent of the general is allotted to the state according to its percentage of the literate population of the United States. Twenty-five percent is allotted on the basis of the newspaper development.

Once the state allotment is arrived at, it is apportioned among the members in the state on the percentage of total population within each member's field, the population field being described as the city of publication and a radius of [fol. 488] ten miles thereof.

This state allotment is apportioned to the evening and morning fields on the following basis: As the afternoon papers are served only six days a week while service is available to morning papers seven days or nights, the afternoon field is charged with 6/13 or 46% of the state allotment and the morning field 7/13 or 54%; the sum of 6 days and 7 days (nights) making 13.

As in the wire charge, each city in a state pays the same general rate per 1000 of population.

(d) Second Wire, Financial Wire and Other Supplementary Wire Charges

The members in the larger cities receive one or more additional general news wires as well as additional financial and racing news wires. The actual cost of these facilities is divided among the cities served on the basis of population of each.

(e) State News Collection Charge

The state service charge is the actual amount appropriated to be spent in each state for special machinery that has been created for the collection of state news. It includes tolls, payments to string correspondents and special state editors. This charge is pro-rated equitably within each state.

(f) News Photos, Feature and Other Special Service Charges

Special services, usually optional in character, such as the news photo, are charged on a schedule based on the population of the cities taking such services.

By order of the Board of Directors.

Kent Cooper, General Manager.

[fol. 489] BOARD'S EXHIBIT 15

Associated Press Unit

Newspaper Guild of New York

A. N. G.

Resolution Adopted, October 11, 1935

"Whereas, the management of the Associated Press has rescheduled members of this Unit on a six-day week and has abrogated the five-day week which has been in existence for more than a year; and

"Whereas, such re-scheduling has been ordered without prior notice to workers and without affording an opportunity for discussion or adjustment; and

"Whereas, an agreement continuing the policy of the five-day week among other things is needed to safeguard the interest of employees and is otherwise fair and equitable;

"Now, Therefore, be it Resolved by the Associated Press Unit (the members voting in favor of this resolution being a majority of the editorial employes employed by the New York office), That this Unit hereby designates and selects the American Newspaper Guild, by its proper committee, to act as the exclusive representative for the purpose of collective bargaining in respect to conditions of employment and particularly in respect to hours of employment."

Witness the Secretary of the Associated Press Unit of the Newspaper Guild of New York, the 14th day of October, 1935.

(Signed) Barnett Bildersee.

[fol. 490] BOARD'S EXHIBIT 16

Copy

October 17, 1935.

The Associated Press, 383 Madison Avenue, New York City

Att. Mr. Kent Cooper, General Manager

GENTLEMEN:

The Associated Press Unit of the Newspaper Guild of New York has transmitted to the American Newspaper Guild for appropriate disposition a resolution adopted by the Unit on October 11, 1935. This resolution (approved by a majority of staff editorial employes in the New York office) designates the American Newspaper Guild, by its proper committee, the representative of the staff editorial employees in the New York office for the purpose of collective bargaining.

The National Executive Board of the American Newspaper Guild, on behalf of the staff editorial employees in the New York office, hereby requests an opportunity to discuss with you the subject of hours and conditions of employment, with the purpose in view of negotiating a collective agreement. We should like to meet with you within a week if that is conveniently possible. Will you be good enough to suggest a date and place convenient for you?

Very truly yours, National Executive Board of the American Newspaper Guild, by Heywood Broun, Chairman.

[fol. 491] BOARD'S EXHIBIT 17

Letterhead of the Associated Press

October 22, 1935.

National Executive Board of the American Newspaper Guild, 49 West 45th Street, New York City.

Attention Mr. Heywood Broun

GENTLEMEN:

I have your letter of October 17.

In the twenty-five years I have been an employe, the employes of The Associated Press have always evidenced their faith in The Associated Press and The Associated Press has always done the best it could to show appreciation therefor. Under present conditions it could not do more than it has done, so that to try to force it to do something it cannot do would be disruptive of the morale and therefore injurious to its existence.

It was for this reason that when the matter of such negotiations was presented over a year ago I stated to a committee of the employes that asked to see me that I knew this to be true, and that when more could be done than is being done I was convinced The Associated Press would do it without a prompter. Thus I could not, without instructions of the Board, consider negotiations with outsiders looking toward such an eventuality as you have suggested.

The final responsibility for anything affecting The Associated Press rests, under the by-laws, with the Board of Directors, to which I will refer your letter and this reply.

Yours very truly, Kent Cooper.

[fol. 492] BOARD'S EXHIBIT 18

October 28, 1935.

The Associated Press, 383 Madison Avenue, New York City.

Re American Newspaper Guild

Collective Bargaining

Attention of Mr. Kent Cooper

GENTLEMEN:

Our client the American Newspaper Guild (National Executive Board) has turned over to us your letter of October 22nd, answering the Guild's letter of October 17th. Not having heard from you further we write to ask that you communicate no later than Wednesday, October 30th, as to whether the Associated Press will or will not comply with the request of the American Newspaper Guild contained in its letter of October 17th.

In the event that The Associated Press will so collectively bargain we would thank you to set some date between October 31st and November 6th; any time that you set will be agreeable to our client. In any event will you kindly advise us by Wednesday evening as to the above matter.

Very truly yours, Greenbaum, Wolff & Ernst, by Morris L. Ernst.

MLE:PG

Delivered by our boy today (Roy at 1.40 P. M.)

[fol. 493] BOARD'S EXHIBIT 19

Letterhead of the Associated Press

October 28, 1935.

Greenbaum, Wolff & Ernst, 285 Madison Avenue, New York, N. Y.

Attention of Morris L. Ernst

GENTLEMEN:

We have your letter of October 28 respecting American Newspaper Guild collective bargaining. As Mr. Cooper said in his letter of October 22 to the National Executive Board of the American Newspaper Guild, he was without authority to consider the matter and that the subject must be referred to the Board of Directors.

That will be done at the next meeting of the Board of Directors, which is held early in January.

Sincerely yours, (Signed) Lloyd Stratton, Assistant General Manager.

Lloyd Stratton:K

[fol. 494] BOARD'S EXHIBIT 20

Constitution of the Newspaper Guild of New York

Article I

Name

Section 1. This body shall be known as the Newspaper Guild of New York, a branch of the American Newspaper Guild.

Jurisdiction

Section 2. The jurisdiction of the Guild shall be co-extensive with the City of New York.

Purposes

Section 3. The purposes of the Guild shall be:

(a) To advance the economic well-being of its members;

(b) To protect their rights by collective action;

(c) To foster friendly cooperation with all other workers; and,

(d) To promote industrial unionism in the newspaper industry;

(e) to raise the standards of journalism by promoting accuracy, thoroughness and impartiality in reporting, writ-[fol. 495] ing and editing news, and in supplying photographic or graphic illustrations for news articles.

Permanency of Organization

Section 4. The Guild shall not have power to dissolve itself while there are ten (10) dissenting members in good standing.

Article II

Organization

Section 5. The term "branch" shall apply to any unit, Guild, district, or other subsidiary membership group of the American Newspaper Guild. The term "shop" shall apply to the office of any news publication, press association, news photo agency, syndicate or radio service and to a bureau maintained by any of these. The term "Guild" shall apply to the Newspaper Guild of New York. Unless otherwise indicated the term "members" shall apply only to those persons described in Section 11, subsection (a).

The following abbreviations when used in this constitution shall have the annexed meanings:

ANG—American Newspaper Guild
NEB—National Executive Board
DC—District Council

Section 6. The Guild shall be divided into units to one of which each member shall belong except as otherwise provided in Sections 45 and 46.

[fol. 496] Section 7. There shall be a Representative Assembly which shall be the legislative body of the Guild.

Section 8. There shall be an Executive Committee which shall be the administrative body of the Guild.

Section 9. There shall be a president, a first vice-president, a second vice-president, a secretary, and a treasurer, who shall be the officers of the Guild.

Section 10. There shall be an Emergency Committee, a Finance Committee, a Press Association Committee, an Organization Committee, a Collective Bargaining Advisory Committee, and such other committee or committees as any competent Guild body may decide from time to time.

Article III

Membership

Section 11. There shall be two (2) types of membership as follows:

(a) Members: Any person gainfully employed by and who devotes the major part of his working time to an editorial department of a news publication, or the editorial office of a recognized press association, news photo agency or syndicate supplying editorial material to news publications which pay for the service, or radio news service, shall be eligible for full membership. Persons admitted to this type of membership shall be known as Members.

[fol. 497] (b) Junior Members: Any regularly enrolled student of a recognized School of Journalism in the City of New York who is not eligible for membership as defined in subsection (a), shall be eligible for Junior Membership during the period of his enrollment. Persons admitted to this type of membership shall be known as Junior Members.

Section 12. Junior Members shall have all the rights and privileges of members except the right to vote, to hold office, and to nominate another member for office.

Section 13. Any member who suffers loss of the employment which qualifies him for membership may be continued as a member under a suspension of dues, and voting power in fiscal matters by paying five (5c) cents per month and by regularly attending meetings of his unit; such membership to cease if and when he accepts permanent employment other than that defined in Section 11, subsection (a).

Section 14. Unemployed newspaper reporters, rewrite men, copyreaders, editors, news photographers, feature writers, columnists, and newspaper artists, who have been employed, as defined in Section 11, subsection (a), not less than (3) years, at least three (3) months of which shall

have been within one (1) year of the date of application for membership, shall be eligible for membership on the same basis as that stated in Section 13.

Section 15. No eligible person may be barred from membership, suspended, fined, expelled, or discriminated against [fol. 498] by reason of sex, race, or religious or political convictions or affiliations.

Section 16. Applications for membership by eligible persons who are unemployed shall be submitted to the unit in the shop where the applicant was last employed, or to the unemployed unit, if such exists, or to the Executive Secretary of the Guild.

Section 17. The unit in the shop where the applicant was last employed, if such exists, shall pass upon the application regardless of where it is submitted.

Section 18. Each applicant for membership shall signify his desire to become a member or junior member by filling in and signing a standard membership application form, and shall furnish such additional information as may be required by the ANG, the Guild, the unit to which the application is submitted, or any two or all of these.

Section 19. Each applicant must disclose in writing whether he has previously been a member of this or any other branch of the ANG, and the reasons for his withdrawal, suspension or expulsion from membership.

Section 20. Each applicant for membership shall be required to bind himself to the fullest observance of the letter and spirit of the constitution of the ANG and of the Guild, and shall declare his willingness to conform to the rules and regulations now in force or hereinafter adopted in accordance with this constitution and the constitution of the [fol. 499] ANG. Upon an applicant's admission to membership the guild shall become, automatically, his sole agent in collective bargaining with his employer.

Section 21. Each member shall receive a standard membership card provided by the ANG through the Guild. The card shall state on its face whether the owner is a Member or Junior Member.

Section 22. Any person who resigns from the Guild while eligible for membership and who wishes to be readmitted to membership may be readmitted to his previous standing, provided there exists no other bar to his readmission, under the following conditions:

(a) If the application for readmission is made within six (6) months of his resignation, the applicant shall be required to pay all dues and assessments he would have been required to pay had he remained a member.

(b) If the application for readmission is made more than six (6) months after his resignation, the applicant shall be required to pay a reinstatement fee of five dollars ($5.00), current dues, and such other sum as the Guild may require. But in no case shall such an applicant for readmission be readmitted under terms more favorable or on payment of a sum less than that required of an applicant under subsection (a) of this Section, or Section 23.

(c) All applications for readmission shall be in writing on a standard form provided for the purpose.

[fol. 500] (d) This Section shall not apply to anyone holding and entitled to hold an honorable withdrawal card under the conditions prescribed in Section 26.

Section 23. No person who has been suspended or expelled from membership in this or any other branch of the ANG may be admitted to membership in the Guild unless and until the reasons for his suspension or expulsion have been removed to the satisfaction of the expelling branch or the appellate body which finally ruled on his suspension or expulsion. If the reason for his suspension or expulsion was non-payment of dues, assessments, or other charges payable to this Guild he may be readmitted to membership only upon payment of all arrearages, but the Executive Committee, if the circumstances warrant, may waive any part or all of this sum.

Section 24. Throughout the period of their suspension, suspended members shall be liable for dues, assessments, and other charges in the same amounts and under the same conditions as members in good standing.

Section 25. Any Member or Junior Member who resign or is expelled from the Guild shall be deemed to owe and

shall owe to the Guild, if unpaid, all dues, assessments, fines and other sums properly chargeable to him up to the date of his resignation or expulsion, and the Guild shall have the right to sue, to collect unpaid dues, assessments, fines and other sums.

[fol. 501] Section 26. A member who becomes ineligible for continued membership by reason of a change in the nature of his employment, and a Junior Member who ceases to remain an enrolled student of a recognized School of Journalism and who is not eligible for membership as defined in Section 11, subsection (a), must withdraw from membership by giving written notice of his intention and by paying all dues, assessments, fines, and other charges, if any, owing by him up to the date of his withdrawal, and by surrendering his membership card. He shall then be entitled to an honorable withdrawal card, provided that his good standing has not been impaired in any other respect.

Section 27. Ownership of a withdrawal card shall entitle the rightful holder to resume his membership in the Guild without payment of an initiation fee or penalty whenever he becomes eligible for membership again. This card shall be supplied by the Executive Secretary of the Guild on application of the withdrawing member accompanied by a certification of the facts by the controller of the unit from which the member seeks to withdraw. When the applicant is not a member of a unit the Executive Secretary shall investigate before issuing a withdrawal card.

Section 28. If a member who becomes ineligible for continued membership as defined in Section 11, subsection- (a) and (b), neglects to withdraw, or refuses upon request to do so, he shall be expelled from membership automatically.

Section 29. Any person who withdrew from membership [fol. 502] after December 1, 1933, and prior to November 1, 1935, because he became ineligible by reason of a change in his employment and whose dues, assessments and other charges, if any, were paid up to the date of his withdrawal, may obtain an honorable withdrawal card by applying to the Executive Secretary of the Guild. In such cases, the Executive Secretary shall make diligent inquiry to confirm the applicant's statements before issuing the card.

Section 30. When a member leaves the jurisdiction of the Guild and accepts elsewhere employment which would maintain his eligibility, he shall report to the Executive Secretary of this Guild and shall apply for a certification on his membership card transferring him to the jurisdiction of the Guild which embraces the area to which he is moving, and the Executive Secretary shall within ten (10) days of the receipt of the application forward a notice of the transfer to the Guild secretary in the area to which the transfer is desired together with a certificate that all dues and assessments are paid or a statement of dues and assessments due and unpaid.

Section 31. This Guild shall not be required to accept any member by a transfer unless his dues, assessments, and other charges, if any, payable to the original branch are paid in full, but when such obligations have been paid by the member and no other bar to acceptance exists, membership shall be automatic.

[fol. 503] Section 32. Any member who neglects to apply for a transfer certification on his membership card before removing permanently from the jurisdiction of one Guild to another shall pay the costs involved in certification.

Section 33. When a member of the Guild is assigned by his employer to continuous employment in the jurisdiction of another Guild, that member shall be entitled to remain in good standing in this Guild. He shall pay dues to the Guild of his residence. He may vote in this Guild on questions relating to local problems. In the case of national or district referenda, however, no member shall be entitled to more than one (1) vote.

Section 34. It shall be the duty of members to keep the Guild informed of any change in their addresses.

Section 35. Should a member be victimized for being an officer or member of the Guild, or for defending a Guild interest, or resisting the imposition of unjust conditions, or refusing to perform work which in the opinion of the Representative Assembly is incompatible with the honor and interests of newspaper work, or the code of ethics of the ANG, the Executive Committee, with the approval of the Representative Assembly, may authorize such payments to him as it deems necessary. Application for such grants

shall be made by a member to his unit which shall thoroughly investigate each case and make such recommendation to the Executive Committee as the circumstances require, but the recommendation of the unit shall not be bind-
[fol. 504] ing upon the Executive Committee. Members who believe themselves victimized may appeal to the Representative Assembly. Notices of grants made under this Section may be offered for publication in The Guild Reporter at the discretion of the Executive Committee.

Section 36. Any member of the Guild may negotiate with his employer in his own interests but nothing herein may be construed as lending the authority or the support of the Guild or any of its units to such member thus acting independently.

Section 37. No person whose interests are deemed by the unit receiving the application or by the Representative Assembly, to lie with the employer as against the interests of the employes shall be eligible for membership.

Section 38. No person who in his employment has the sole right to hire or discharge shall be eligible for any office in the Guild or any of its units, except by express permission of the Executive Committee.

Section 39. No person who at any time hereafter works as a scab or strikebreaker or who is in any other respect an enemy of organized labor, shall be admitted to membership without the approval of the Representative Assembly and the NEB.

Section 40. Where there exists a doubt concerning the eligibility of a member or an applicant for membership, it shall be the duty of the unit of the shop where the mem-
[fol. 505] ber or applicant is employed to submit the facts to the Representative Assembly, and the decision of that body shall be final.

Section 41. Where there exists a doubt concerning the eligibility of a member or an applicant for membership employed in a shop where no unit exists, it shall be the duty of the Executive Secretary to investigate and submit the facts to the Representative Assembly, and the decision of that body shall be final.

Section 42. Any applicant for membership against whom a decision is rendered by the Representative Assembly under Sections 40 and 41 shall be entitled to the return of all moneys paid by him to the Guild as initiation fee, dues and assessments.

Section 43. Members shall have the right to attend the meetings of any unit, but may vote only in those units of which they are members.

Article IV

Units

Section 44. A group of seven (7) or more eligible persons in any shop shall be organized into a unit subject to the provisions of this constitution.

Section 45. Units consisting of fewer than seven (7) members shall be dissolved forthwith. Members of such dissolved units shall be members at large unless and until they are organized into another unit or other units.

[fol. 506] Section 46. Where no unit exists membership at large shall be permitted.

Section 47. Each unit shall consist of the eligible employes in a single shop. However, with the permission of the Representative Assembly, and where a definite community of interest dictates the formation of a single unit rather than several, members who are employes of several employers may form a single unit.

Section 48. Members may form themselves into a unit where one does not exist and seek recognition as a unit through the Executive Secretary. If the Guild does not take proper action on such application within thirty (30) days, the organizers may appeal to the NEB.

Section 49. Each unit, wherever possible, shall bear the name of its shop. To this shall be added the word "unit." Where the unit embraces the employes of more than one shop, its name shall be descriptive of its scope in this respect.

Section 50. Subject to such conditions as may be prescribed by the Representative Assembly, Junior Members may form units of not fewer than seven (7) persons, and

elect unit officers, and delegates and alternates to the Representative Assembly.

Section 51. Neither the unit as such nor any of its officers or members may act as attorney for the membership of a unit, or any part thereof, or for other employes of the organization by which the unit members are employed, in any collective bargaining negotiations.

[fol. 507] Section 52. The officers of a unit may investigate matters that pertain to their unit alone and, in emergency matters bearing on the health of their members may take action upon the advice of not fewer than three (3) members of the Guild Executive Committee, one of whom shall be the president, first vice-president, or second vice-president, but under no circumstances may this be construed to mean that officers of a unit have the right to participate in collective bargaining negotiations in behalf of their unit or members thereof except as observers as provided in Section 150.

Section 53. Units are specifically prohibited from making contracts or incurring liabilities for the Guild, and the Guild shall not be responsible under any such contracts or for such liabilities. Unless authorized in writing by a general membership meeting, the Representative Assembly, or the Executive Committee, members are likewise prohibited from making contracts or incurring liabilities for the Guild, and the Guild shall not be responsible under any such contracts or for such liabilities.

Section 54. Each unit shall be officered by an elected chairman and controller and such other officers as the unit may consider to be necessary for the proper administration of the unit affairs. Each unit shall also elect, under the terms of this constitution, a delegate or delegates and an alternate or alternates to the Representative Assembly.

Section 55. The unit chairman shall be a delegate to the Representative Assembly.

[fol. 508] Section 56. Units shall hold at least six (6) regular meetings a year of which not more than one (1) shall be held in any one (1) calendar month. A quorum shall be not fewer than five (5) members or less than ten (10%) per cent of the unit membership, whichever is greater. Other

meetings may be called in the manner determined by the unit.

Section 57. Unit officers, delegates, and alternates, shall be elected annually by secret ballot of all unit members in good standing. The unit shall establish the seniority of its delegates and alternates.

Section 58. The controller of each unit shall receive applications for membership in his unit, shall have charge of unit funds, shall be responsible for the collection of dues, assessments, initiation fees, and fines, and the payment of them to the treasurer of the Guild; shall cause to be kept complete records, and shall furnish the Executive Secretary with quarterly lists of members in good standing and their addresses on a form provided for that purpose. The controller shall transmit to the Guild treasurer by the last business day of each month all moneys collected by him up to and including that day for all dues, fines, assessments, and initiation fees, together with a detailed and complete statement covering the money transmitted.

Section 59. Casual vacancies in unit offices shall be filled as the majority of the members in good standing of a unit present and voting at a unit meeting may decide, due notice having been given to unit members that a vacancy exists.

[fol. 509] Section 60. The Representative Assembly shall have the power to decide any unit election dispute.

Section 61. Each unit may adopt rules for its governance but in no case may such rules conflict with the constitution of the ANG or of this Guild.

Section 62. No unit shall be, remain, or become incorporated under the laws of any state, territory, or country. Incorporation of any unit shall automatically dissolve such unit, and members participating in such incorporation shall be expelled from membership.

Section 63. Voting by proxy shall not be legal at any meeting of the Guild, the Representative Assembly, the Executive Committee, any of the units, or any committee of any of these bodies; but a member compelled to leave a meeting during the debate on a question and before the vote on that question, may leave his proxy with the chairman to be effective only on the question under consideration.

Article V

Representative Assembly

Section 64. The Representative Assembly shall be composed of delegates and alternates elected by the units. All members of the Executive Committee who are not also members of the Representative Assembly shall be members of the Representative Assembly ex-officio, without the right to vote.

[fol. 510] Section 65. Each unit shall one (1) delegate and one (1) alternate for each of its twenty-five (25) members in good standing, and one (1) delegate and one (1) alternate for any remainder of ten (10) or more.

Section 66. When a unit has fewer than twenty-five (25) members in good standing, the Chairman shall be the delegate and the unit shall elect at least one (1) alternate.

Section 67. The delegates and alternates shall be elected annually during the ten (10) days of October within their respective units.

Section 68. Casual vacancies between annual elections shall be filled as the unit may decide provided due notice of the vacancy has been given to the unit members.

Section 69. If the moneys collected in any unit up to the last business day of the month have not been sent to the Treasurer and received by the Fifth (5th) of the following month, in the discretion of the Representative Assembly, its delegates and alternates may be disqualified from voting at the Representative Assembly, and the Representative Assembly may authorize such other action as it deems necessary.

Section 70. Before a delegate or alternate may be seated in the Representative Assembly, the controller of his unit must certify to the Executive Secretary the fact that he has been duly designated. Only delegates and alternates so certified shall have the right to vote in meetings of that body.

[fol. 511] Section 71. Alternates shall have the right to attend and address all meetings of the Representative Assembly but shall have the right to vote on questions before that body only if the unit is not fully represented. But in no case may the number of delegates and alternates entitled to vote

exceed the total number of delegates to which the unit is entitled.

Section 72. No member of the Representative Assembly may cast more than one (1) vote at one time, except that on a roll call each member shall be entitled to cast as many votes as there are members in good standing in his unit divided by the number of delegates to which his unit is entitled. If a unit is represented by fewer delegates and/or alternates than are entitled to represent the unit those present shall be entitled to twenty-five (25) votes each, but in no instance may a member of the Representative Assembly cast more than twenty-five (25) votes.

Section 73. The latest monthly report of the Treasurer shall be the basis for voting.

Section 74. Delegates and alternates of units composed of Junior Members shall have the right to participate in debate in the Representative Assembly but not to vote.

Section 75. The presence of certified delegates or alternates or both from not fewer than one-third (⅓) of the number of units of the Guild shall constitute a quorum for the transaction of business at any meeting of the Repre- [fol. 512] sentative Assembly; but a majority of the members present at the time and place of any meeting, although less than a quorum, may adjourn the same from time to time without further notice until a quorum shall attend.

Section 76. The Representative Assembly shall meet within ten (10) days after the annual election of its members and shall hold its second meeting within fourteen (14) days of the first meeting. Thereafter it shall meet regularly at least once a month, but at the written request of the Executive Committee, or of fifteen (15) members of the Representative Assembly, a special meeting of the Assembly shall be called by the Executive Secretary on not less than three (3) days' written notice.

Section 77. The Assembly shall have the power to designate the time and place of its meetings.

Section 78. The Representative Assembly shall legislate for the Guild on all matters, and its acts, unless rejected at a meeting of the general membership, shall be binding upon all units and members of the Guild.

Section 79. The Representative Assembly shall make its own rules for the conduct of its deliberations, and shall have the power to choose committees to assist in its work.

Section 80. The Representative Assembly shall elect a chairman, who shall preside at its meetings, and shall also elect a vice-chairman, who shall preside in the absence of the chairman. Members of the Executive Committee may [fol. 513] not hold either office. In the absence of the chairman and vice-chairman, the meeting shall elect a temporary chairman whose ~~tenure~~ of the chair shall terminate at the close of the meeting or with the presence at the meeting of the regular chairman or vice-chairman.

Section 81. The chairman and vice-chairman shall be elected by the Representative Assembly at its second meeting. The elections shall be by secret ballot, but if only one (1) candidate is nominated for either office, the Assembly may dispense with the ballot for that office. The chairman and vice-chairman shall hold office for one (1) year.

Section 82. In the absence of a reason acceptable to the Representative Assembly, the chairmanship shall be deemed to be and shall be vacant if the holder of this office absents himself from three (3) consecutive meetings of the Assembly or from four (4) out of five (5) meetings. The same rule shall apply to the vice-chairmanship. When either office becomes vacant for any reason, the Representative Assembly shall fill the vacancy in such manner as it may decide.

Section 83. The Representative Assembly shall have the power to require the Executive Commiteee, any officer of the Guild, any committee, or any member, to render a report to it.

Section 84. The Representative Assembly shall have the power to fill all vacancies in the Executive Committee by secret ballot at the next meeting of the Assembly after the vacancies occur, and those elected to fill such vacan-ies shall [fol. 514] hold office until the next regular election of the Guild, but no election to fill such vacan-ies shall be held unless proper notice of intention to fill the vacan-ies shall have been sent to all members of the Assembly. In the event that only one (1) candidate is nominated to fill a

vacancy, the Assembly may dispense with the ballot for that office.

Section 85. The Representative Assembly shall make rules and regulations for the discipline of its members.

Section 86. All questions involving basic policies or the exercise of broad discretion, such as negotiations with the representatives of publishers and owners, legislative matters, and the like, shall be decided by the Representative Assembly, and the Executive Committee shall carry out the directions of the Representative Assembly.

Section 87. The Representative Assembly shall have the right to levy assessments subject to the restrictions contained in Section 185 and to increase the initiation fee.

Section 88. The Representative Assembly shall have the right to call a strike or strikes provided that:

(a) A majority of the members in good standing of the unit or units directly involved shall have voted to strike, and

(b) The DC, if such exists, and the NEB have been fully informed of the circumstances.

[fol. 515] Section 89. The Representative Assembly shall have the right to authorize participation by the Guild in a boycott or boycotts.

Article VI

Executive Committee

Section 90. The Executive Committee shall be composed of the president, first vice-president, second vice-president, secretary, treasurer, and ten (10) additional members, each of whom shall have one vote. If, in accordance with Section 99 an Executive Secretary or an organizer is appointed, either or both shall serve as a member or members of the Executive Committee without vote.

Section 91. The chairman of the press association committee shall be one of the ten (10) additional members of the Executive Committee, and the photographers in the Guild shall be entitled to elect one (1) of the additional members. In the event of failure of either of these groups to elect a member to the Executive Committee within thirty

days of the election of the Executive Committee by the Representative Assembly, the Representative Assembly shall elect at its next meeting two additional members to the Executive Committee to fill these vacancies. The chairman of the Unemployed Unit shall be authorized to sit on the Executive Committee as an ex-officio member.

Section 92. The other eight (8) shall be elected by the Representative Assembly by secret ballot at the next meeting of the Assembly following the annual election of officers. [fol. 516] They shall be chosen in such manner as to give the widest possible representation to the various units.

Section 93. The chairman of the Representative Assembly shall be a member of the Executive Committee ex-officio, without vote, and his presence shall not count towards a quorum at meetings of that body.

Section 94. The Executive Committee may invite representatives of units not represented on the Committee to sit with it from time to time as occasion requires, but those so invited shall act only in a consultative capacity, shall have no vote, and their presence shall not count towards a quorum.

Section 95. Five (5) members of the Executive Committee shall constitute a quorum at any meeting, provided that proper notice of the meeting shall have been sent to each member of the Executive Committee.

Section 96. The Executive Committee shall meet at least once a month. The president of the Guild may call special meetings of the Executive Committee on his own initiative and shall call special meetings upon the written or oral request of any three (3) members of the Executive Committee.

Section 97. The Executive Committee shall attend to all administrative and routine matters connected with the conduct of the business of the Guild.

[fol. 517] Section 98. The Executive Committee shall have the power to choose committees to assist in the discharge of its duties.

Section 99. The Executive Committee, subject to the approval of the Representative Assembly, may appoint an Executive Secretary, and one or more organizers, at sal-

aries to be determined by the Representative Assembly. The Executive Committee may also appoint such clerical and other assistants as may be required for the conduct of the business of the Guild and shall fix the compensation therefor in each case.

Section 100. All persons employed in salaried positions may be discharged in the discretion of the Executive Committee but on a basis not less favorable than the most favorable contract obtained by the Guild from a publisher, and in the discharge of the Executive Secretary, the organizer, or the organizers, the Representative Assembly must concur.

Section 101. All paid employes who are entrusted with the handling of Guild funds shall be bonded in the amount or amounts fixed by the Executive Committee, and the premium for all such bonds shall be paid by the Guild.

Section 102. Except as provided in this constitution no officer of the Guild or member of the Executive Committee shall receive any salary either directly or indirectly from the Guild for services performed as a representative of the Guild but shall be compensated for traveling and other necessary expenses incurred in behalf of the Guild, [fol. 518] and where the interests of the Guild require that a member absent himself from his place of employment and in so doing he suffers loss of compensation from his employer, he may be paid a sum corresponding to that so lost.

Section 103. The Executive Committee may institute legal proceedings in the name of the Guild whenever necessary.

Section 104. It shall be the duty of the Executive Committee to advise and instruct the units in all matters.

Section 105. The Executive Committee shall have the power to appeal to the membership on any question affecting the interests of the members.

Section 106. If any member of the Executive Committee should resign, die, remove from the country, be permanently incapacitated, or be otherwise unable to fulfill the duties of his office during his term of office, a successor shall be selected in the manner prescribed in Section 84.

Section 107. A resignation from the Executive Committee shall not be effective until it has been accepted by the Representative Assembly, unless the member has become ineligible. In the latter even- the member's office shall be vacant automatically even though he neglects or refuses to submit his resignation.

Section 108. The Executive Committee shall designate three (3) of its members to sign checks drawn against the [fol. 519] general funds of the Guild. Checks shall be valid only when signed by any two of these.

Section 109. The Executive Committee, subject to the approval of the Representative Assembly, shall have the power to enter into an arrangement with any other Guild or Guilds to appoint an organizer or organizers whose sphere of activity shall be the jurisdiction of the Guilds entering into such an arrangement. The organizer or organizers shall be paid a salary or salaries and expenses to which the several Guilds shall contribute in proportion to their memberships as these may vary from time to time.

Section 110. The Executive Committee with the approval of the Representative Assembly shall have the right to authorize the holding of a benefit performance or performances, or any form of public entertainment for the purpose of increasing the Emergency Fund referred to in Section 187.

Section 111. All members of the Executive Committee shall be members, ex-officio, of all committees, provided, however, that none may serve on any committee named to conduct an election in which he is a candidate for office or on a committee named to hear charges against him or on any committee empowered to disburse or recommend the disbursement of Guild funds of which he may be a beneficiary. No member of the Executive Committee serving ex-officio on a committee shall have a vote in the committee.

[fol. 520]

Article VII

Election of Officers

Section 112. The Representative Assembly shall make rules for the election of officers, and on or before Novem-

ber 15 shall designate a committee for their execution. This committee shall consist of five (5) members and shall be known as the Elections Committee.

Section 113. The Elections Committee shall supervise the election and count the ballots. It may recruit such assistance as may be necessary to perform its functions.

Section 114. All members in good standing shall be eligible for office.

Section 115. Nominations for the five (5) city-wide offices may be made by the Representative Assembly, by member petitions, or both.

Section 116. Nominees of the Representative Assembly must receive a majority vote of those present and entitled to vote at the second meeting of the Assembly following the annual election of delegates.

Section 117. Member petitions must be signed by not fewer than twenty-five (25) members in good standing from two (2) units, but not more than fifteen (15) of the signatories may be from one (1) unit.

Section 118. To be valid nominations shall be filed with [fol. 521] the Elections Committee on or before November 30, or December 1, if November 30 falls on a Sunday or holiday.

Section 119. Within twenty-four (24) hours of the receipt by it of a nomination or nominations the Elections Committee shall notify candidiates of their nomination.

Section 120. Before his name is placed on the ballot each candidate shall file with the Elections Committee a statement of his willingness to serve, if elected, in the office for which he has been nominated. The Elections Committee is expressly forbidden to place on the ballot the name of any candidate who neglects or refuses to meet this condition.

Section 121. In the event of a contest or contests the Elections Committee shall cause to be mailed on or before December 10 to each member entitled to vote a ballot listing all properly nominated candidates. The ballot shall show each candidate's unit and whether he was nominated by the Representative Assembly or by member peti-

tions. All ballots must be returned through the mails and, to be valid, each must be postmarked not later than midnight, December 16.

Section 122. The election shall be by plurality.

Section 123. If there are no contests for any of the five (5) city-wide offices the election by ballot shall not be held and the nominee for each office shall be considered elected.

[fol. 522] Section 124. The results of the election shall be announced at the first meeting of the general membership following the election, and shall be offered for publication in The Guild Reporter.

Section 125. The Representative Assembly shall decide all disputes arising from an election or elections. Its decision or decisions may be appealed to a meeting of the general membership next following the decision or decisions.

Section 126. The term of office for all officers of the Guild shall be one (1) year, but any officer may be elected to succeed himself or to fill another office.

Section 127. The order of succession of Guild officers before vacancies are filled shall be president, first vice-president, second vice-president, secretary and treasurer.

Article VIII

Duties of Officers

Section 128. The president of the Guild shall preside at all general and Executive Committee meetings of the Guild. He shall supervise other officers in the discharge of their respective duties except as otherwise provided in this constitution. At general and Executive Committee meetings he shall have the deciding vote on all questions of equal division. He shall sign all membership cards. He shall perform such other duties as may be delegated to him by the Executive Committee, the Representative Assembly, a general membership meeting, or all of these.

[fol. 523] Section 129. The first vice-president shall preside in the absence of the president at general and Executive Committee meetings of the Guild. He shall

perform such other duties as may be delegated to him by the president, the Executive Committee, the Representative Assembly, a general membership meeting, or all of these.

Section 130. The second vice-president shall preside in the absence of the president and the first vice-president at general and Executive Committee meetings of the Guild. He shall perform such other duties as may be delegated to him by the president, the Executive Committee, the Representative Assembly, a general membership meeting, or all of these.

Section 131. The secretary shall be the custodian of all records and documents other than those properly in care of the treasurer and/or the Executive Secretary and shall keep accurate minutes of all general membership meetings of the Guild. He shall perform such other duties as may be delegated to him by the president, the Executive Committee, the Representative Assembly, a general membership meeting, or all of these.

Section 132. The treasurer shall be the custodian of all Guild funds. He shall sign all checks for authorized and approved expenditures, disbursing the funds of the Guild, shall make monthly reports to the Executive Committee and the Representative Assembly upon the condition of the Guild's finances and shall make such other reports on the Guild's finances as may be required from time to time [fol. 524] by either body. He shall submit his accounts for audit at any time the Executive Committee, the Representative Assembly, or any fifty (50) or more members from three (3) units desire, but in no event shall a period of twelve (12) months elapse without an audit. The report of the annual audit shall be made to the membership. He shall perform such other duties as are usually incident to the office of treasurer, or as may be prescribed from time to time by the Representative Assembly, the Executive Committee, a general membership meeting, or all of these. He shall be bonded.

Section 133. The Executive Secretary shall be paid a salary and expenses and shall devote his full working time to the business of the Guild. As the agent of the Executive Committee he shall have as his principal duties the organization of new units where none exists, the obtaining

of new members in existing units, and the regular collection of all moneys payable to the Guild, and he shall have charge of the general offices of the Guild and of all records and property not properly in the custody of any other official or officer of the Guild. He shall keep complete and accurate minutes of all meetings of the Executive Committee and such other bodies as the Executive Committee may designate. He shall conduct all routine correspondence and such other correspondence as may be authorized by the Executive Committee, the Representative Assembly, or a general membership meeting. He shall be responsible for the transmission of notices of meetings under the conditions prescribed for such notices in all cases where such duty is not prescribed for another official or officer. He shall cause to be kept complete and accurate [fol. 525] records of the membership, and such records shall show the number of members in good standing on the last business day of each month, the full amount of dues, assessments, initiation fees, and other charges, if any, payable and paid by each and every member, and, where appropriate, the date of suspension, expulsion, withdrawal, or transfer of each and every member together with the reasons for such suspension, expulsion, withdrawal or transfer. He shall be responsible for the issuance of receipts for all moneys received by the Guild, and shall cause to be furnished to unit controllers and other persons entitled to them, application blanks, membership cards, dues, assessments, and other stamps, and such other blanks, forms, and receipts as may be necessary for the proper conduct of the business of the Guild. He shall promptly inform the members of the Executive Committee and such other members of the Guild as may be entitled to notice of all matter affecting the interests of the Guild. He shall perform such other duties as may be prescribed by the Executive Committee from time to time, and shall refrain from performing acts not specifically authorized herein which are forbidden by the Executive Committee. He shall make monthly reports of his activities to the Executive Committee.

Section 134. The organizers shall be paid salaries and expenses and shall devote their full working time to the business of organizing new units where none exist, and the obtaining of new members in existing units. They shall

be the agents of the Executive Committee if their appointments are under Section 99. It shall be the duty of the or-
[fol. 526] ganizers to correspond with and visit members and prospective members in those communities where no units exist with a view to encouraging eligible persons to join the Guild. They shall perform such other duties as may be prescribed by the Executive Committee from time to time and shall refrain from performing acts not specifically authorized herein which are forbidden by the Executive Committee. They shall make monthly reports of their activities to the Executive Committee.

Article IX

Standing Committees

Section 135. The Emergency Committee shall be a permanent body created by the Representative Assembly. Between meetings of the Representative Assembly it shall be responsible to the Executive Committee. It shall consist of a chairman and six (6) other members, and when occasion requires its size may be increased as the Representative Assembly may decide. It shall have the right to recruit such assistance as it may need to perform its duties. It shall be the duty of the Emergency Committee in consultation with the officers of the Guild to direct all emergency activities of the Guild, to promote public entertainments for the purpose of increasing the emergency fund referred to in Section 187. Emergency activities shall include action during strikes, lockouts and boycotts. The Committee shall gather all data likely to be useful to it and the Guild in emergency activities, shall familiarize itself with the practices of both employer and employee organ-
[fol. 527] izations in such activities and shall prepare detailed plans to be used in such emergencies.

Section 136. The Guild shall establish and maintain a local press association committee. It shall consist of the chairmen of all press association, syndicate and news photo agency units, hereinafter referred to as press association units. The chairman of the committee shall be elected by ballot at an annual joint meeting of press association units and by such election shall become a member of the Executive Committee. The first meeting and election shall be held at the time of the adoption of this con-

stitution. The chairman then elected shall serve until the first of the regular annual joint meetings of the press association units, which shall be held during the first two (2) weeks of each November. In the event a vacancy occurs between annual meetings, it shall be filled through election by the press association committee. Other joint meetings of the press association units may be held on call of the press association committee. The press association committee shall cooperate at all times with the national press association committee of the ANG.

Section 137. The Representative Assembly shall establish and maintain a Finance Committee of three (3) members whose duty it shall be to assist the Treasurer in preparing a budget of Guild normal expenditures, and to assist the Treasurer and Executive Secretary in stimulating collections of dues and assessments. Between meetings of the Representative Assembly the Finance Committee shall be responsible to the Executive Committee.

[fol. 528]

Article X

Membership Meeting

Section 138. There shall be a regular meeting of the general membership of the Guild during the week ending December 24. The date for this meeting shall be set by the retiring Executive Committee before the ballots cast in the annual election for the five (5) city-wide offices are counted.

Section 139. The first order of business at the meeting shall be the reading by the chairman of the Elections Committee of the results of the annual election of officers. He shall read the names of all candidates, the names of their units, the officers for which they were candidates, the number of votes each candidate received, the names of the successful candidates, the total number of the ballots cast, the number of spoiled ballots, the number of ballots excluded from the count and the reasons for their exclusion, and may make such other report on the election as he desires. He shall also report the objection or objections, if any, to the election of any candidate.

Section 140. Immediately following the report of the chairman of the Elections Committee the new officers shall be inducted and assume their duties.

Section 141. There shall be not fewer than three (3) other regular meetings of the general membership during the year, the dates to be set by the Executive Committee; and not more than three (3) months may elapse between [fol. 529] regular meetings. The Executive Secretary shall give the membership at least five (5) days' written notice prior to any regular meeting.

Section 142. At any general membership meeting the presence of five (5%) per cent of the members in good standing shall constitute a quorum, provided that they represent at least one-half (½) of the number of units in the Guild; but the majority of members present at the time and place of any such meeting, although less than a quorum, may adjourn the same from time to time without further notice, until a quorum shall attend.

Section 143. Special meetings of the membership may be called:

(a) By a majority at a quorum meeting of the Representative Assembly;

(b) By a majority of the Executive Committee;

(c) Upon written petition to the Executive Secretary by not fewer than one hundred (100) members in good standing.

Section 144. Within two (2) days of the receipt by him of a call for a special meeting in any of the forms above prescribed, the Executive Secretary shall send out proper notices for the meeting.

Section 145. At special meetings called by member petitions there shall be roll call of those who signed the peti- [fol. 530] tion and anyone whose signature appears thereon and who does not answer when his name is called shall be deemed to be absent. Any such member shall be fined the sum of Two ($2.00) Dollars unless he submits to the Executive Committee a reason for his absence deemed good and sufficient by that body.

Section 146. When proper notice of intention has been given to the membership any meeting of the general membership shall have the right to reject or ratify by majority vote any action of the Representative Assembly, the Execu-

tive Committee, or any subordinate body; provided, however, that such ratification or rejection shall not be in violation of this constitution or the constitution of the ANG.

Section 147. Only members in good standing shall be entitled to vote and each shall have one (1) vote on each question submitted to the membership, but unemployed members who retain their standing under a suspension of regular dues shall not vote on fiscal questions.

Article XI

Collective Bargaining

Section 148. The right to bargain collectively for the whole membership of the Guild or any of its units shall lie exclusively with the Executive Committee, and with it only on instructions of the Representative Assembly, and the results of the negotiations shall be subject to ratification by the membership of the unit or units affected and [fol. 531] by either the Representative Assembly, or a general membership meeting.

Section 149. Not fewer than three (3) members of the Executive Committee, or Guild members chosen by that body, shall participate in any collective bargaining on behalf of the Guild or any of its units.

Section 150. During the negotiations the unit or units affected shall have present as observers one (1) or more of its or their own members. The observers shall not participate in the discussion unless specifically requested to do so by the Guild's spokesman.

Article XII

Discipline

Section 151. The Guild shall suspend, fine, or expel any member found guilty of any of the following acts:

(a) Wilfully and maliciously making a false statement on his application for membership.

(b) Concealing or withholding material information when applying for membership.

(c) Misappropriating or attempting to misappropriate money or property of the ANG or any of its branches.

(d) Disobeying or neglecting to comply with any law- [fol. 532] ful order or decision of the NEB, or the Executive Committee, the Representative Assembly, or the general membership within the time limit specified in the order or decision.

(e) Working as a strike breaker or scab.

(f) A serious violation of this constitution.

(g) Entering into a "yellow dog" contract.

(h) Entering into any contract which might damage the Guild.

(i) Disclosing to an employer or his agent any confidential decision, proceeding, or communication of the ANG or any of its branches.

(j) Refusing or wilfully neglecting to pay dues, assessments or fines.

(k) Concealing the fact that he has been rejected for membership or suspended, fined, or expelled from membership in another branch of the ANG, or unit of this Guild.

(l) Entering into an agreement either oral or written to work for lower wages than, longer hours than, or under conditions inferior to those established by the Guild or the employer in the shop in which he seeks employment or is already employed, or by entering into collective bargaining without specific authorization as provided in Section 148.

(m) Taking court action against the Guild, or the ANG, or any branch thereof, or any member of any of these [fol. 533] before exhausting all remedies provided in this constitution.

(n) Participating in the incorporation of a unit.

(o) Urging any other member to commit any of the acts forbidden in this Section.

Section 152. No member of the Guild shall be suspended, fined or expelled except on charges as hereinafter provided.

Section 153. The charges shall be filed by two (2) members in good standing.

Section 154. The charges shall be in writing, shall specify the Section or Sections of the constitution the accused is charged with violating, and the dates on which the violations were committed, and shall be filed with the Executive Secretary within six (6) months of the alleged commission of the acts.

Section 155. Within five (5) days of the receipt by him of the charges, the Executive Secretary shall cause a copy of the charges to be served on the accused either in person or by registered mail sent to the accused at the address appearing for him on the records of the Guild.

Section 156. The accused shall file a written answer with the Executive Secretary within fifteen (15) days of the date on which the charges were served on him.

Section 157. If the accused neglects or refuses to file [fol. 534] a written answer to the charges within the time prescribed, he shall be deemed guilty as charged and shall be suspended, fined, expelled, removed from office or otherwise penalized as the Executive Committee may decide.

Section 158. As soon as may be convenient after the receipt by him from the accused of a written answer to the charges, but in no event later than thirty (30) days following said receipt, the Executive Secretary shall cause notice of the pending charges to be sent to the Representative Assembly.

Section 159. At the meeting next immediately following receipt by the Executive Secretary of the written answer, the Representative Assembly shall examine the charge or charges and decide whether it or they are of a sufficiently serious nature to warrant consideration by a trial board. If the Representative Assembly decides to the contrary, the charges shall be dropped. If the Representative Assembly decides that the charges warrant a hearing, it shall forthwith select a trial board.

Section 160. Trial boards shall include two (2) members of the accused's unit or, if the accused is not a member of a unit, any two (2) members of the Guild. None of these shall be members of the Representative Assembly. In addition there shall be two (2) members of the Representative Assembly who are not members of the accused's unit, if the accused is a member of a unit, and one (1) mem-

ber of the Executive Committee who is not a member of the accused's unit, if the accused is a member of a unit.

[fol. 535] Section 161. The trial board shall commence hearing the charges within seven (7) days of its appointment.

Section 162. At least three (3) days prior to the date set for the trial the Executive Secretary shall cause to be sent to the accused written notice of the date, time, and place selected for the trial.

Section 163. At the trial the accused shall have the right to cross-examine his accusers and their witnesses, to testify himself, and to call witnesses in his defense, and to have another member of the Guild act as his attorney. His accusers shall have the same right.

Section 164. The decision of the trial board shall be delivered promptly and shall be binding upon the accused as soon as delivered.

Section 165. If the accused does not appear at the time and place designated for his trial and has not presented two (2) days in advance of the trial a reason for his intended absence acceptable to the trial board, the trial board shall proceed to take testimony in the same manner as if the accused were present and, if the accused is found guilty as charged, the trial board may fine, suspend, expel or otherwise penalize the accused.

Section 166. The accused shall have the right of appeal from the trial board's decision to the DC, from that body to the NEB, and from that body to the next national convention.

[fol. 536] Section 167. An appeal from the decision of the trial board to be effective must be filed within thirty (30) days of the date of the decision by the trial board.

Section 168. When an appeal is filed, the trial board may in its judgment stay execution of its decision until the decision of the appellate body has been delivered.

Section 169. Sections 152 to 168 inclusive shall not apply where the removal from office of an officer of the Guild or a member of the Executive Committee is sought, nor shall the

said Sections apply under the conditions described in Sections 174, 175 and 176.

Section 170. Any officer of the Guild or member of the Executive Committee may be removed from office by a majority vote of the Representative Assembly at two (2) consecutive meetings of that body, provided, however, that written notice of the first vote and a copy of the charge or charges shall be sent by mail to each member of the Assembly not fewer than five (5) days in advance of the second meeting.

Section 171. During the period between the first vote and the second, if the first vote is for removal the officer or Executive Committee member whose removal is sought shall be deemed to be and shall be suspended from office.

Section 172. No officer of the Guild or member of the Executive Committee may be removed from office without:

[fol. 537] (a) Having written charges served upon him and transmitted by the Executive Secretary to each member of the Representative Assembly five (5) days in advance of the date set for the first meeting at which the charges are to be heard.

(b) Having an opportunity to be heard in his defense and to cross-examine the person or persons who filed the charges.

Section 173. Any officer of the Guild or member of the Executive Committee whose removal is sought shall have the right to designate another member of the Guild to act as his attorney at his trial.

Section 174. Any unit officer or delegate to the Representative Assembly may be removed from office, but only on written charges, by a majority vote of the members of his unit in good standing present and voting at a unit meeting of which proper notice has been sent to all unit members together with an announcement of the intention to seek the removal of the officer or delegate. This Section shall not limit the right of the Representative Assembly to discipline its members as defined in Sections 82 and 85.

Section 175. Any unit officer or delegate removed from office may appeal the unit's action to the Representative Assembly and the decision of that body shall be final.

Section 176. Any member who files unsustained charges [fol. 538] against another member may, by a two-thirds vote of the Representative Assembly and without referring the matter to any trial board, be censured or fined or both censured and fined.

Section 177. The names and addresses of persons expelled from membership or removed from office and such other information as may be deemed desirable shall be offered for publication in The Guild Reporter.

Article XIII

Dues, Assessments and Initiation Fees

Section 178. The Representative Assembly shall have the power to fix dues, provided any dues set may be subject to a meeting of the general membership as provided in Section 143, subsection (c).

Section 179. Dues are payable on the first day of each calendar month but a member shall be entitled to a period of two (2) weeks' grace in which to pay. It shall be the duty of each member to pay his dues, without any request from any person, and every member when paying dues must demand and shall receive on payment of the proper sum a dues stamp for each month's dues paid, said stamp or stamps to be affixed by the member to the appropriate space on his membership card. Members at large and Associate Members shall pay their dues to the Executive Secretary.

Section 180. Junior Members if not organized in units, shall pay their dues to the Executive Secretary.

[fol. 539] Section 181. Any person whose dues are two (2) months in arrears shall immediately after the third successive contribution date on which he has failed to pay his dues and assessments be disqualified from holding any office, and shall be ineligible for election to any office or to vote in any meeting, election, or referendum of the Guild, its units or the Representative Assembly, or the ANG, or to nominate another member for office.

Section 182. If within fifteen (15) days after the third consecutive date on which he has failed to pay his dues, a member shall not have reduced his arrears he shall be not

in good standing and his name shall be placed upon a suspended list. Upon recommendation of his unit or his unit executive committee, his name shall be removed from the records and his membership card recalled. The intention to expunge his name from the membership records shall be conveyed to the member within five (5) days after the recommendation has been received by the Executive Secretary. Members who are not members of units shall be subject to the same discipline upon recommendation of the Executive Committee.

Section 183. The names of members dropped from the records and all appropriate information concerning them shall be transferred to a special file in which the names of all who have forfeited membership for any reason shall be recorded, together with the reasons, when known, for the said forfeiture.

Section 184. Each applicant for admission to member-
[fol. 540] ship or Junior membership shall, at the time of submitting his application, pay an initiation fee which shall include the One ($1.00) Dollar initiation fee required by the ANG. Persons authorized to accept moneys for the Guild shall issue temporary receipts for initiation fees. When an applicant has been accepted as a member, receipt of his initiation fee shall be acknowledged by an endorsement across the face of the first dues stamp placed upon his membership card.

Section 185. In an emergency the Representative Assembly of the Guild shall have the right to levy an assessment not in excess of Fifty ($.50) Cents per member per week, but in no event shall a local assessment be levied at the same time as an ANG assessment unless such a proposal has been submitted to a ballot vote of the membership, and no such assessment shall be sanctioned which does not obtain a majority of those entitled to vote and voting.

Section 186. All moneys collected under emergency levies shall be deposited in an account separate from regular Guild moneys, and separate records shall be maintained of the deposits in and withdrawals from this account. It shall be known as the Newspaper Guild of New York Emergency Fund. Checks against the account shall be signed by an officer of the Guild and the chairman of the Emergency Committee.

Section 187. Whenever the Emergency Fund falls below Twenty Thousand ($20,000) Dollars, an emergency shall be deemed to exist.

[fol. 541] Section 188. Assessments shall be due and payable during the week or weeks designated by the Representative Assembly.

Section 189. Any member of the Guild who neglects or refuses to pay an assessment, properly imposed, within sixty (60)days of the due date shall not be in good standing and his name shall be placed on a suspended list. Upon recommendation of his unit or his unit executive committee his name shall be removed from the records and his membership card recalled. The intention to expunge his name from the membership records shall be conveyed to the member within five (5) days after the recommendation has been received by the Executive Secretary. Members who are not members of units shall be subject to the same discipline upon recommendation of any officer of the Guild.

Section 190. Except such sums as may be due and payable to the ANG or to another branch all the funds collected in any manner in behalf of or in the name of the Guild by any of its units or members shall be deemed to be and shall be the property of the Guild.

Section 191. Any member whose dues are in arrears two (2) months, whose assessments have not been paid as defined in Section 189, or against whom an order of suspension or expulsion has been issued by a competent body shall not be in good standing.

Section 192. Whenever the word "member" is used in Sections 179, 182, 183, 190, and 191 it shall be deemed to and shall include Junior Member.

[fol. 542] Article XIV

Waiver of Notice

Section 193. Whenever under any provision of this constitution written notice is required to be given such notice may be dispensed with by waiver in writing by all persons entitled to receive such notice. The words "proper notice" wherever they appear in this constitution, unless otherwise defined shall mean five (5) days' notice.

Article XV

Interpretation

Section 194. Should any doubt arise concerning the proper construction of any part or parts of this constitution, it shall be referred to the Representative Assembly for interpretation, and that body's decision shall be final, provided, however, that no ruling of the NEB interpreting any part of the constitution of the ANG may be set aside. Any provision of this constitution found to be in conflict with the constitution of the ANG shall be inoperative. The Representative Assembly shall have the right to decide any question whereon this constitution is silent. No clause, section or article of this constitution may be arbitrated.

Article XVI

Amendments

Section 195. The constitution may be amended by writ-[fol. 543] ten ballot provided the proposed amendment has been approved by a majority vote at any meeting of the Representative Assembly, or by majority vote at any general or special membership meeting. Ballots for such amendments must be sent to the membership by mail by the Executive Secretary, with postage affixed to the return envelope or postcard, and a majority of votes received within ten (10) days after the mailing of the ballots shall decide the issue.

Board's Exhibit 21

Constitution and By-Laws of the American Newspaper Guild

(Stamp)

Article I

Name, Object and Organization

Section 1. This body shall be known as the American Newspaper Guild.

Section 2. The purposes of the ANG shall be to advance the economic wellbeing of its members, to guarantee

greater economic security for its employed and unemployed, to guarantee as far as it *are* able constant honesty in the dissemination of public intelligence, to raise the standard of journalism and ethics of the industry, to foster friendly cooperation with all other workers and to promote industrial unionism in the newspaper industry.

[fol. 544] Section 3. The term branch shall apply to any unit, Guild, district or other subsidiary membership group of the ANG. The term shop shall apply to the office of any news publication, wire service, syndicate or photo agency and to a bureau maintained by any of the above. The term Guild shall apply to a local Guild. The following abbreviations when used in the constitution of the ANG shall have the annexed meanings:

1. ANG—American Newspaper Guild
2. NEB—National Executive Board
3. NC—National Council
4. DC—District Council

Section 4a. Any person gainfully employed by, and who devotes the major part of his working time to an editorial department of a news publication in the United States of America, or by the editorial office of a recognized press Association, news photo agency, or syndicate supplying editorial material to newspapers which pay for the service, shall be eligible for membership. No eligible person shall be barred from membership, suspended, fined, expelled or otherwise discriminated against by reason of sex, race, or religious or political convictions or because of anything he writes for publication.

Section 4b. Any member who suffers loss of the employment which qualifies him for membership in the ANG may be continued as a member under a suspension of dues and voting power in fiscal matters by paying (5) cents per month, and by regularly attending meetings of his branch; [fol. 545] such membership to cease if and when he accepts permanent employment other than that defined in Section 4a.

Section 4c. Unemployed newspaper reporters, rewrite men, copy readers, editors, news photographers, feature writers, columnists and newspaper artists who have been

employed as defined in Section 4a, not less than three (3) years, at least three (3) months of which shall have been within one (1) year of the date of application for membership, shall be eligible for membership on the same basis as that stated in Section 4b. Applications for such membership shall be submitted to the unit which represents the employees of the organization by which the applicant was last employed, or to special unemployed units where such exist, or to the secretary of the branch. The unit which represents the employees of the organization by which the applicant was last employed, if such unit exists, shall pass upon the application regardless of where it is submitted.

Section 4d. No person whose interests are deemed by the Guild properly receiving the application for membership to lie with the employer as against the interests of the employees shall be eligible to membership.

Section 4e. When a member of a Guild is assigned by his employer to continuous employment in the territory of another Guild, that member shall be entitled to remain a member in good standing in both Guilds. He shall pay dues to the Guilds of his residence. He may vote in both Guilds [fol. 546] on questions relating to local problems of the respective branches. In the case of national or district referenda, however, no member of the ANG shall be entitled to more than one vote.

Section 5a. A group of seven (7) or more eligible persons in any locality or shop may organize themselves into a unit of the ANG, subject to the provisions of this constitution. Where there are fewer than seven (7) enrolled members in a given shop, they shall be members at large of the Guild in that jurisdiction. In the event that no Guild shall have been there established, they shall be members at large of the district, or, in the absence of a district, members at large of the ANG.

Section 5b. All members of units, Guilds and districts shall be considered to be and shall be members of the ANG.

Section 5c. When, in the opinion of the DC, or, where there is no DC, of the NEB, the interests of members and of the ANG may best be served by the organization of

members from two (2) or more shops into a single unit, the DC shall have the authority to establish such a unit provided that a majority of the members in each of the shops to be formed into a single unit, shall agree to such organization.

Section 5d. The NEB may grant a Guild charter to any Guild consisting of one (1) or more units except as hereinafter provided.

[fol. 547] Section 6a. In case any Guild wilfully violates the constitution of the ANG the NEB shall have the power to suspend its charter as hereinafter provided, but may recommend revocation or annulment of a charter to the next succeeding national convention and no other agency in the ANG but the national convention shall have the power to revoke or annul a charter.

Section 6b. Charters granted by the NEB unless revoked, suspended or annulled shall remain in force, so long as seven (7) members shall remain in the Guild and continue to comply with the constitution of the ANG. When the membership of any Guild falls below seven (7) or the Guild disbands, or its charter is revoked or annulled, its charter and books shall be delivered to the ANG within (10) days after demand by the NEB. In such case the remaining members shall be members at large of the ANG until they become members of other branches.

Section 7. The ANG shall not be dissolved so long as three (3) Guilds shall desire its continuance.

Section 8. The general office of the ANG shall be situated in the city of New York and shall not be removed therefrom except by majority vote of the delegates present and voting at any convention.

[fol. 548]

Article II

Conventions

Section 1. The ANG shall meet annually in general convention in the month of June. At least six (6) months prior to the holding of the convention the NEB shall name the city in which the next convention is to be held and the date and time at which it shall convene.

Section 2. Special conventions of the ANG shall be called by a referendum vote of the membership initiated by the NEB or upon a written request of at least ten (10) Guilds. Such Guilds shall be located in at least five (5) states of the United States of America. The NEB shall submit the referendum within two (2) weeks after the request has been received and shall tabulate the votes within twenty (20) days after such submission. Within ten (10) days after the tabulation, if a majority of the votes be favorable, notice for such convention shall be placed in the mails, and the convention shall be held within thirty (30) days of the mailing of the notice, in a city selected by the NEB. But no such referendum shall be legal unless the total ballots cast shall be equal to fifty-one (51) per cent of the membership of the ANG according to the most recent quarterly records of the ANG treasurer.

Section 3. In the National Convention each Guild shall be entitled to at least one vote. In addition each Guild shall have one vote for the first fifty (50) members of a [fol. 549] major fraction hereof; one vote for the second fifty (50) members or major fraction thereof and one vote for each one hundred (100) additional members or major fraction thereof after the first one hundred (100). Each Guild shall be entitled to as many delegates as it has votes. All members represented at the convention must be in good standing as of one (1) month preceeding the convention, according to the records of the National Treasurer.

Section 3a. A Guild which has been chartered less than thirty (30) days prior to the opening of the National Convention may send one (1) or more delegates under the terms of Section three (3) who shall have the right to speak but not to vote at the convention.

Section 4. To be eligible as a delegate to the convention, a candidate must be a member in good standing in the Guild of which he is an elected delegate.

Section 4a. Before a delegate may be seated at the convention he shall present to the duly authorized Credentials Committee of the convention credentials properly signed by at least two general officers of the Guild he represents.

Section 5. The expenses of delegates to the convention should be paid by the Guilds represented by them.

Section 6. The proceedings of the convention shall be governed by this constitution, and the rules adopted at the [fol. 550] preceding convention shall be enforced from the opening of the convention until new rules shall have been adopted by the current convention.

Article III

National Officers

Section 1. The National officers of the ANG shall be a president, executive secretary, treasurer, a vice president representing wire service employees and four (4) additional vice presidents.

For the purpose only of assuring geographical distribution of national officers, at least one of the seven voting members of the NEB shall be elected from each of the following six (6) regions:

Region 1—Includes the first and second federal reserve districts.

Region 2—Includes the third and fifth federal reserve districts except North Carolina and South Carolina.

Region 3—Includes the fourth federal reserve district and Michigan and that part of Indiana which lies in the seventh federal reserve district.

Region 4—Includes the sixth, eighth and eleventh federal reserve districts except Southern New Mexico and Southern Arizona and includes North and South Carolina.

[fol. 551] Region 5—Includes the seventh federal reserve district except Michigan and Indiana, and includes the ninth federal reserve district except Montana, and includes Kansas, Nebraska and Oklahoma and that part of Missouri lying in the 10th federal reserve district.

Region 6—Includes the twelfth federal reserve district and Montana, Wyoming, Colorado, New Mexico and Southern Arizona.

The term federal reserve district shall mean the area enclosed by such districts as they were constituted June 1, 1935. No member of the NEB shall hold any other Guild office.

Section 2. National officers shall be elected by majority vote at each annual convention, and shall hold office until their successors are duly elected and installed, unless removed as provided in this constitution.

Section 3. The president shall call to order all conventions of the ANG, and preside over their sessions. All actions of the president in his capacity as such shall be under the general direction of the NEB. He shall by virtue of his office be a delegate to conventions of any organizations with which the ANG is affiliated. His expenses in the discharge of his duties shall be paid by the ANG, upon approval by the NEB.

[fol. 552] Section 4—In the event of disability of the president, the NEB shall designate another national officer to perform his duties.

Section 5. The vice presidents shall perform such duties as they shall be directed to perform by the NEB. The vice presidents shall act as representatives of the president on all matters referred to them by him.

Section 6. The executive secretary shall keep and publish a correct record of the proceedings of each convention. He shall preserve and have official custody of all ANG documents, papers and books. He shall have power, with the consent of the NEB, to hire such clerical help as shall be necessary to carry on the business of the ANG. He shall receive all applications for charters and shall issue the same on behalf of the NEB when granted. The executive secretary shall be paid a salary set by the NEB, and all authorized expenses incurred by him in performance of his duties for the ANG. He shall be custodian of the seal of the ANG.

Section 7. The treasurer shall receive all monies due to the ANG, giving his receipt therefor, and shall keep correct account of all income and expenses of the ANG. He shall deposit all funds of the ANG in such bank or banks as may be designated by the NEB, to be withdrawn by checks signed by not fewer than two (2) national officers, as may be authorized thereto by the NEB, at least one of whom shall be a member of the finance committee hereinafter provided. [fol. 553] He shall maintain an index of the members of

the ANG and such shall be accurately kept and posted from the records of members' payments which shall be submitted by branches to the national office. He shall pay all bills approved by the NEB, and he shall submit an itemized quarterly report to the NEB and an annual report of the convention. He shall give a bond of a reliable surety company in any amount fixed by the NEB which shall be not less than $5,000. for the faithful performance of his duties, and the premium thereon shall be paid by the ANG. He shall cause his accounts to be audited monthly by a reputable, certified union accountant to be appointed by the NEB. All authorized expenses incurred by the treasurer in the performance of his duties to the ANG shall be paid by the ANG, subject to review by the NEB. He shall issue quarterly report blanks to each branch with instructions for filling out and returning the same, the quarterly periods comprised in such reports to end on the last days of March, June, September and December. He shall perform all his duties under the direction of the NEB.

Section 8. The treasurer shall make quarterly reports upon the condition of ANG'S finances to the finance committee, the NEB and secretaries of all Guilds, or whenever called upon to do so by the finance committee or NEB.

Section 9. If a vacancy should occur in any of the national offices the NEB shall fill the vacancy until the next national convention.

[fol. 554]

Article IV

The National Council

Section 1. The National Council shall consist of presidents of all Guilds.

Section 2. The National Council shall be empowered to review all decisions of the NEB with respect to the suspension of charters and shall be the agency for removal or suspension of members of the NEB as hereinafter provided.

Section 3. All matters within the jurisdiction of the NC shall be presented to it in writing by an authorized agent of the NEB.

Section 4. An appeal may be had from the decision of the NC to the next ensuing convention of the ANG.

Article V

National Executive Board

Section 1. The president, executive secretary, treasurer and vice presidents shall together constitute the NEB on which the executive secretary shall have no vote.

Section 2. The NEB shall have general supervision in accordance with this constitution over all the affairs of the ANG.

Section 3. At all regular meetings of the NEB, five (5) voting members shall constitute a quorum. Upon the writ- [fol. 555] ten request of three (3) members, the executive secretary shall call a special me-ting of the entire NEB. The NEB shall meet immediately before and upon the adjournment of each convention, and in the first week of September, December and March.

Section 4. The President with the approval of the NEB shall appoint the following standing committees; Finance, Publisher Relations, Labor Relations, Legislative, Dan de Sauze Memorial Awards Committee and such other committees as may be ordered or deemed necessary.

Section 4a. A Wire Service Committee shall be formed consisting of three (3) members of the NEB including the vice president for wire services as chairman, with power to add to the committee. The duty of this committee shall be to advise and assist branches in conducting negotiations through Guilds and districts; to compile and maintain, with the assistance of wire service members of DC's, a complete and reliable roster of member and non-member wire service employes; to draw up and agree upon a program applicable nationally for the various wire services of national scope; to enlist support for the same from wire service members and all branches of the Guild; and to conduct collective bargaining on a national scale with wire services of national or world-wide scope.

Section 4b. The finance committee shall consist of three (3) members of NEB who shall meet quarterly. It shall be the duty of this committee to prepare a quarterly budget to cover the cost of administration of the national office; [fol. 556] to approve all disbursements and to provide for

regular examinations and audits of all books, vouchers, receipts and all other financial records of the ANG at quarterly intervals. After such budget has been approved by the NEB, it shall be strictly adhered to by national officers and at no time shall it be exceeded by them. Funds may, however, be transferred from one department to another by the NEB.

Section 4c. The committee on publisher relations shall consist of three (3) members, whose duty shall be to advise branches of the ANG on collective bargaining and to foster by every means at his disposal satisfactory working agreements with employers. No collective bargaining agreement shall be entered into by any branch after the same has been disapproved by the NEB as being not in accordance with this constitution and the collective bargaining policies of the ANG as expressed at the last convention.

Section 4d. The committee on labor relations shall consist of three (3) members and the duty of this committee shall be to foster unity with all employees of the newspaper industry and other industries.

Section 4e. The legislative committee shall formulate and foster plans for advancing in federal, state and municipal governments legislative measures drawn to conform with the policies approved by the ANG national convention, shall through the official publications of the Guild [fol. 557] keep the membership informed at all times of its activities, enlist their support, and make recommendations on legislation pending or to be introduced in the various legislative branches of the government.

Section 5. Discipline of branches. The NEB shall have the right to suspend the charters of any branch for any one of the following reasons:

(a) Wilful refusal or neglect to conform to the constitution and by-laws of the ANG over a period of thirty (30) days or more.

(b) Refusal or neglect to collect or remit dues.

(c) Refusal to submit records for inspection to the NEB or its duly accredited representative.

(d) Refusal or neglect to bring a member to trial within thirty (30) days after filing of charges as herein provided.

(e) Failure to enforce penalties imposed by a proper tribunal within the ANG.

(f) Taking court action against the ANG or any subordinate body or member thereof, before exhausting all remedies provided by this constitution.

Section 6. Nevertheless a charter shall not be suspended, until written charges have been served by registered mail addressed to the Guild office, upon the officers of the Guild, [fol. 558] and they or members of the Guild shall have been heard. In case the NEB decides to suspend the charter of any Guild, it may allow the Guild a period of thirty (30) days to remedy the fault for which suspension has been ordered, and notice of the time allowed shall be served upon the officers of the Guild.

Section 7. This constitution shall be interpreted and construed by the NEB and should any doubt arise as to the proper construction of any part thereof it shall be referred to the NEB for interpretation, and the NEB's decision shall be final unless reversed as herein provided. In like manner the NEB shall decide whether or not constitutions of local branches conflict with this constitution.

Section 8. Any and all business may be transacted at a special meeting of the NEB, but matters of which members of the NEB have received due notice shall take precedence upon the agenda.

Section 9. If a member of the NEB takes employment removing him from the jurisdiction of the ANG, his office shall automatically become vacant, and the NEB shall at its next quarterly meeting fill the vacancy.

Section 10. The NEB shall have power to fill all vacancies in its own body, and in any standing and special committees of its appointment.

Section 11. The NEB may appoint as many national organizers as it may deem necessary and advisable but not more than six (6), and fix their duties and salaries; pro- [fol. 559] vided that no full time organizer or other officer of the ANG shall be paid less than $50. a week.

Article VI

Local Guilds

Section 1. A guild shall be comprised of one (1) or more units as defined by this constitution.

Section 2. A charter shall not be granted to a Guild in a community in which there is another Guild in existence, except with the consent of such existing Guild.

Section 3. Each Guild shall have the power to enact and enforce local by-laws and a constitution which is not in conflict with this constitution.

Section 4. Guilds shall do all in their power to strengthen and promote the labor movement in their respective areas.

Section 5. Guilds shall hold regular meetings of members at least once every three (3) months. Any Guild failing to hold such meetings during a six (6) months' period may be suspended from the ANG.

Section 6. Each Guild shall promptly pay its dues and assessments between the 1st and 15th of the month following that for which they are due. Any local in arrears on its dues or assessments for a period of forty (40) days [fol. 560] or more shall be notified by the treasurer and shall be suspended from the ANG if dues and assessments are still in arrears twenty (20) days after the treasurer's notice was mailed.

Section 7. Only dues stamps of the ANG shall be used by Guilds as receipts for dues. Any Guild violating this rule shall be suspended from the ANG by the NEB in accordance with the provisions of the constitution.

Section 8. The funds of the branches shall be used only for the payment of dues and other legitimate authorized expenses of the branches, for the financing of strike activities, and for the purpose of assisting labor and other organizations friendly to the ANG and to the labor movement.

Section 9. The NEB shall furnish to all Guild secretaries printed blanks to be filled out, signed and forwarded to the treasurer not later than the 15th of each month, showing the income of the Guild from dues, initiation fees, as-

sessments and other sources, and the number of dues stamps and assessments stamps received by the Guild from the national office of the ANG for the preceding month.

Section 10. After August 1, 1935 no branch shall be, remain or become incorporated under the laws of any state, territory or country. Incorporation of a branch thereafter shall automatically dissolve such branch and the NEB shall thereupon take possession of its charter.

[fol. 561] Section 11. No branch shall be authorized to make contracts or to incur liabilities for the ANG, and the ANG shall not be responsible upon any such contracts or liabilities unless authorized in writing by a duly empowered agent of the NEB.

Section 12. Guilds shall conduct yearly elections of officers which shall include a president and such other officers as may be deemed necessary.

Section 13. No member of the ANG who is not in good standing shall be eligible to vote in any national district, Guild or unit election, or referendum.

Section 14. All officers shall be elected by ballot except as otherwise provided in this constitution.

Section 15. Applications for charters shall be made on a standard form to be furnished by the NEB and shall be accompanied by a charter fee of five dollars ($5.00).

Article VII

Districts

Section 1. Whenever there are two (2) or more Guilds located in an area whose geographical position or community of interests constitutes, in the opinion of the NEB and the Guilds involved, sufficient reason for their functioning as a district, these Guilds shall elect two (2) delegates each, and one (1) additional delegate for each hun-[fol. 562] dred members or major fraction thereof, to comprise a District Council.

Section 2. Guilds shall finance the activities of DC's and DC's may levy assessments for this purpose after a referendum.

Section 2a. DC's shall have the right to adopt constitutions and by-laws for the regulation of their affairs consistent with this constitution, to maintain a district office, to elect a district organizer or district executive secretary and to appoint assistants as may be deemed necessary, fixing the salaries and functions of same. The terms of such elected officers shall expire at the same time of those of DC members in a given district.

Section 3. It shall be the duty of DC's to enforce decisions and findings of the NEB.

Section 4. It shall be the duty of DC's to conduct an election by all wire service members in the district of a representative of wire service employees to serve as a member of the DC and to fill promptly any vacancy in this post.

Article VIII

Relations With Employers

Section 1. It shall be the duty of unit officers to check on the observance of all oral and written agreements between employers and the Guild, and to report any infractions thereof and any violations of any conditions required by a [fol. 563] state or other Government regulation to Guild executive committee and District Councils. Failing a correction of abuses by the Guild or district within a period of thirty (30) days after the latter shall have been notified, it shall be the duty of unit, Guild and district executive bodies to report the facts jointly or separately to the NEB which shall then in its discretion seek enforcement.

Section 2. The executive committee of a Guild shall have the right to declare strikes upon the following conditions:

(a) Full notice shall be sent to the DC and to the NEB.

(b) When a majority of the members of each unit involved has voted approval.

Section 3. Where the executive committee of a Guild refuses to declare a strike upon request of the majority of the membership of each unit involved, the NEB may declare a strike upon the request of such unit or units. In such event, the NEB may name the strike committee.

Section 3a. Units, Guilds and districts shall keep the NEB fully informed of developments which may lead to a demand for financial support in strike activities.

Section 3b. The conduct of strike activities shall be in the hands of the executive committee except as provided in Section 3. There shall be added to the committee for [fol. 564] strike purposes a member of the DC if the Guild is a part of a DC, and a representative of the NEB designated by that body.

Section 4. The NEB may review expenditures of funds received and disbursed in support of strike activities and may require the committee charged with the conduct of strike activities to submit in advance a weekly budget of anticipated disbursements.

Section 4a. The NEB shall fix rates of strike benefits, after consultation with the strike committee.

Article IX

Members

Section 1. Any applicant for membership in the ANG or any branches thereof shall signify his or her desire to become a member by filling in and signing a standard membership blank issued by the NEB.

Section 2. Applicants for membership shall furnish such information as may be called for in the application, and such additional information as may be required by the NEB. The Guild shall be the judge of the eligibility of its own members within the terms of the constitution.

Section 3. Applicants for membership shall be required to bind themselves to the fullest observance of the letter and spirit of the constitution of the ANG. Applicants who [fol. 565] have been expelled from membership by any branch of the ANG shall be readmitted to that branch or another branch only after all their differences shall have been adjusted with the expelling unit, or with a higher body.

Section 4. Members shall keep the NEB and branch officers advised of any changes in address.

Section 5. Each member shall be furnished with a standard membership card provided by the NEB.

Section 6. No member of the ANG shall work for lower wages than, longer hours than, or under conditions inferior to, those negotiated by his Guild for his unit.

Section 7. Any member desiring to leave the craft to enter an occupation that shall make him ineligible under the eligibility provisions of this constitution, shall withdraw from membership in the ANG by giving written notice and paying any dues, assessments, and other charges against him up to the date of his withdrawal, and surrendering his membership card. A member who leaves the craft or becomes ineligible under the terms of this constitution must withdraw upon request of his unit or Guild or district of the ANG. If a member shall fail to withdraw within ten (10) days after the mailing of such request, he shall stand suspended from membership.

Section 8. Members in good standing who become ineligible for continued membership because of acceptance of newspaper employment that disqualifies them from mem- [fol. 566] bership, shall be entitled to an honorable withdrawal card. This card shall entitle the rightful holder to resume his membership in the Guild without payment of penalties or initiation fees when any change in the nature of his employment makes him again eligible to membership. This card shall be supplied by the NEB and shall be issued by the national executive secretary on application of the withdrawing member accompanied by a certification of facts by the executive committee of the Guild from which the member seeks to withdraw. The cards shall be honored by any Guild to which the rightful holder makes application for resumption of membership after re-establishing his eligibility. Any person who has been forced to withdraw from the Guild since December 1, 1933 because of a change in the nature of his newspaper employment may obtain an honorable withdrawal card in the same manner as provided in the foregoing.

Section 9. Any member who has withdrawn or been suspended or expelled, except those holding honorable withdrawal cards, who wishes to be readmitted to the ANG

may be readmitted to membership under the following conditions:

(a) If the application for readmission is made within six (6) months, the member shall be required to pay all dues and assessments since the date of his withdrawal, and may be readmitted to his previous standing and membership, provided there exists no other bar to his readmission under the terms of this constitution.

[fol. 567] (b) After six (6) months, members shall be readmitted as new members, but shall pay all current assessments and such other sum as the readmitting Guild shall require.

Section 10. When a member of any branch leaves employment in the area of that branch and accepts employment in any editorial capacity of any newspaper, recognized press association, news photo agency or syndicate in the area of another branch, he shall so report to the secretary of the branch in which he is a member, receiving from said secretary a certification on his membership card of the transfer.

Section 11. The secretary of any branch, when a member shall transfer, shall within ten (10) days forward a notice of the transfer to the secretary in the area to which transfer is desired, along with a certificate that all dues and assessments are paid, or a statement of dues and assessments owing.

Section 12. No branch shall be required to accept membership by transfer unless all dues and assessments to the original branch are paid, but when such dues and assessments are paid, membership shall be automatic.

Section 13. Any member who fails to receive transfer certification on his membership card when moving from one (1) branch to another shall have his membership declared void by the national executive secretary.

[fol. 568]

Article X

Discipline

A member may be suspended or expelled for the following reasons:

Section 1. For wilfully and maliciously making a false statement on his application for membership.

Section 2. For misappropriating or attempting to misappropriate money or property of the ANG or any of its branches.

Section 3. For disobeying or failing to comply with any order or decision of the NEB, or any branch within the time provided for such order or decision.

Section 4. For working as a strikebreaker or violating this constitution.

Section 5. For entering into "yellow dog contracts", or disclosing to an employer or any person other than a fellow member any secret decisions or proceedings of the ANG or any of its branches.

Article XI

Trials on Appeals

Section 1. No member of the ANG shall be suspended or expelled; no Guild or district shall be reorganized or suspended; and no officer of the ANG or any of its branches shall be removed from office without notice of charges as set forth herein and a fair opportunity to be heard in defense.

[fol. 569] Section 2. Charges must be submitted in writing to the governing body of the Guild concerned. The members of the Guild shall elect a trial board to hear the charges. In the event the aggrieved individual or group is dissatisfied with the decision of the trial board, the appeal may be carried to the DC or the NEB, which shall investigate the grievance and make a finding which shall be final, subject in the case of a DC to review by the NEB.

Section 3. The accused shall be notified by letter sent by registered mail to the address recorded on the books of the ANG or Guild at least ten (10) days in advance of the hearing, and if he shall fail to appear at the time and place designated for the trial without presenting a good and sufficient reason for his absence, the trial body shall proceed to take testimony for the trial in the same manner as if the accused were present. The trial body shall have author-

ity to impose a fine, or suspend or expel, subject to appeal as herein provided.

Section 4. The decisions of the NEB, may be appealed to the next ensuing national convention. However suspension of a charter may also be appealed to the NC.

Section 5. Appeals from the decisions of a branch to a higher body must be taken within thirty days after notice of the decision of the lower body.

Section 6. All decisions of trial and appeal bodies shall be effective as soon as rendered, provided, however, that the trial or higher body may stay the decision until the hearing is decided.

[fol. 570] Section 7. The following method shall be used in disciplining national officers; Any member of the NEB may be suspended or removed from office or suspended or expelled from membership in the ANG for a cause or causes which would require similar action against any other member of the ANG, but members of the NEB shall not be suspended or removed from office or suspended or expelled from membership in the ANG except in the following manner:

(a) Charges may be brought by any three (3) members of the NEB or by ten (10) or more Guilds located in five (5) or more states of the United States of America.

(b) Written charges shall be filed with an authorized agent of the NEB who shall send a copy of the charges to the accused and call upon him for a written answer. The answer shall be filed within thirty (30) days of the demand for it.

(c) A copy of the charges and answer shall be sent by registered mail to each member of the national council together with a ballot on which each NC member shall state that in his opinion the accused is innocent of guilty.

(d) Ballot shall be returned to the authorized agent of the NEB within fifteen (15) days of their receipt by NC members. Twenty (20) days following the date of the mailing of the ballots to the NC the authorized agent of the [fol. 571] NEB shall count the returned ballots and inform the NEB forthwith of the number of votes cast for and against the accused.

(e) If a majority of NC members voting find that the accused is guilty the accused shall be suspended from office forthwith, and the charges shall then be presented to the entire membership of the ANG in the manner provided for referenda in this constitution. In the event the accused is found guilty by membership vote he shall be expelled from office or from the ANG, or both; if not guilty, the suspension shall be removed forthwith.

Article XII

Finances

Section 1. Members shall pay monthly dues as determined by their Guilds.

Section 2. Each Guild shall pay the ANG monthly due of fifty (50) cents per month per member. The dues shall be turned in by Guild treasurers to the ANG within fifteen (15) days after the first of the month on which they fall due with an accompanying statement giving the names of the members to be credited with payment.

Section 3. Each Guild shall pay to the ANG $1.00 as an initiation fee determined by the Guild.

[fol. 572] Section 4. Each Guild shall pay to the ANG $1.00 as an initiation fee for each new member immediately after the latter has been accepted into the Guild.

Section 5. The ANG shall issue uniform monthly dues stamps as receipts for dues. The dues stamps shall be affixed by the branches in the monthly space on the membership card of each member and shall constitute a receipt for dues paid by him.

Section 6. The NEB shall have the power in an emergency to levy an assessment not in excess of fifty (50) cents per member per week on all members for a period of not more than sixteen (16) weeks in any fifty-two (52) weeks between conventions for the purpose of assisting strike activities and for the defense fund. Such assessment shall be collected by the branches from their members and be evidenced by a special assessment stamp issued by the ANG. Assessments shall be levied on the basis of membership shown in the record department of the ANG at the time of the decision to levy the assessments, but subject to correction based on the average per capita receipts. An

emergency may be declared by a majority vote of the NEB. When the defense fund at any time falls below twenty thousand dollars ($20,000.00), the NEB may declare an emergency.

Section 7. Effective September 1, 1935, no member shall be in good standing who is in arrears on dues more than sixty (60) days.

[fol. 573]

Article XIII

Collective Bargaining

Section 1. The NEB shall prepare a standard form of contract consistent with the provisions of this constitution and consistent with the policies of the ANG. Copies of this standard form of contract shall be furnished to every branch and shall be used as a basis for negotiations with employers.

Section 2. The right to bargain collectively for the members of the ANG who are employees of press associations, feature syndicates or news photo agencies of national scope shall be vested in the NEB in cooperation with the wire service committee; but no agreement reached in behalf of these members shall bind them unless and until ratified by them by a majority vote of their number. The NEB shall permit a Guild to bargain for press association and feature syndicate members whose bargaining problems are shown to be of a local nature.

Section 3. The right to bargain collectively for the whole membership of a Guild or any division thereof shall lie with the executive committee of the Guild and with that body solely, and the results of its negotiations shall be subject to ratification in such manner as the local Guild shall provide, but in no event by less than a majority vote of the unit most concerned. Not fewer than three (3) persons shall participate in any collective bargaining in behalf of the ANG.

[fol. 574] Section 4. The NEB may intervene in collective bargaining negotiations being carried on by any Guilds where such negotiations are plainly in violation of this constitution or when requested to do so by the local Guild. Local Guilds shall keep the NEB informed of the progress of any negotiations and such negotiations shall have the

approval of the NEB before the ANG may give support to a local guild in such negotiations.

Section 5. Any member of the ANG may negotiate with his employer in his own interests but nothing herein may be construed as lending the authority or the support of the ANG, or any of its branches, to such member thus acting independently. No member shall negotiate for a wage or other standard of employment inferior to that secured by the Guild in any collective action for his unit, and any person so doing shall be subject to discipline by the NEB.

Article XIV

Referenda

Section 1. The NEB through the Executive Secretary shall submit to a referendum vote of the ANG membership:

(a) Any matter, upon its own initiative, excepting removal of one of its own members;

(b) Every appeal from an NC decision for expulsion of a member of the NEB;

(c) Any matter acted upon at an ANG convention, when [fol. 575] requested to do so by a petition signed by at least thirty (30) per cent of the delegates attending the convention and representing Guilds located in at least five (5) states of the United States of America. Such a petition, to be effective, must be presented to the NEB within thirty (30) days after the convention's adjournment. The petition may include an alternative proposal to be voted on provided, however, that such alternate proposal was presented at the convention;

(d) Any question, motion or resolution, if submitted to the NEB and endorsed by at least ten (10) Guilds located in five (5) states.

Section 2. Motions by Guilds to submit matters to a referendum shall be printed in the Guild Reporter, with an exact text of the proposed ballot as furnished to the NEB by the Guilds making these motions and shall be open for seconds or endorsements for thirty (30) days after publication. If at the end of thirty (30) days after publication there are not sufficient seconds or endorsements re-

ceived by the NEB, the matter shall be dropped and cannot be raised during a period of six (6) months thereafter. The NEB shall be the judge of whether a new motion constitutes resubmission of a question.

Section 3. Whenever a national convention is to be held within three (3) months, no question shall be submitted to a referendum vote except a motion to postpone the convention, or a question concerning removal of a member of the NEB.

[fol. 576] Section 4. When it has been properly determined that a referendum shall be taken, unless a National Convention shall have provided a different procedure the following procedure shall be used. The Executive Secretary shall have ballots prepared and within ten (10) days after such determination he shall send by registered letter to each Guild president as many ballots as there are members of that Guild in good standing according to ANG records together with a list of those members. These ballots shall all be uniform and each shall have printed or mimeographed on it the ballot text originally submitted to the Executive Secretary. The Guild president shall within five (5) days after receipt of the ballots have them mailed by each member of his Guild listed by the Executive Secretary as in good standing, and returned to Guild headquarters within ten (10) days after receipt by the members. The Guild's governing body or its agents authorized by it for this purpose shall canvass the returned ballots not less than fifteen (15) or more than twenty (20) days after they were mailed out and forthwith certify to the ANG Executive Secretary by registered letter or telegram the result. All results certified by Guilds shall be tabulated by the NEB and the referendum declared completed within forty-five (45) days of the date on which the Executive Secretary sent out the ballots. The National result and the result of the vote in each Guild shall be published in the first issue of the Guild Reporter thereafter. If there be any difference between the number of ballots sent to a Guild and the number of paid members it claims to have, it shall distribute the ballots according to the ANG list [fol. 577] received with them; and if there be any difference between the result of its vote and the report thereof in the Guild Reporter, the national result nevertheless shall stand; except that, in the matter of the result of a referen-

dum on appeal of a member of the NEB against an NC decision ordering his expulsion, if the result of the referendum be protested within thirty (30) days by at least ten (10) Guilds located in at least five (5) states and having a total membership in good standing of ten (10) per cent of the total membership in good standing of the ANG, and only if the protest be based upon definite charges of gross irregularity in conduct of the referendum, then the NEB and seven (7) members of the NC drawn by lot from the full membership of the NC shall constitute a supreme tribunal and decide the issue.

Article XV

Amendments

Section 1. This constitution may be amended at any convention by a majority vote of the accredited delegates.

[fol. 578] BOARD EXHIBITS

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. No. E 82-93

THE ASSOCIATED PRESS, Complainant,

—against—

ELINORE MORRHOUSE HERRICK, Regional Director of the National Labor Relations Board in and for the Second Region, JOHN DOE (said name being fictitious), Trial Examiner designated or to be designated by the National Labor Relations Board, J. WARREN MADDEN, JOHN M. CARMODY and EDWIN S. SMITH constituting the National Labor Relations Board, AMERICAN NEWSPAPER GUILD, JONATHAN EDDY, Executive Secretary of American Newspaper Guild, and DAVID MOSCOVITZ, attorney of National Labor Relations Board, in and for the Second Region, Defendants.

STATE OF NEW YORK,
County of New York, ss:

Jackson S. Elliott, being duly sworn, deposes and says:

That he is an officer of the complainant herein, to wit: the Assistant Secretary thereof; that he is the person who

verified the bill of complaint herein, said verification being dated January 3rd, 1936; that he is the person who verified the answer of The Associated Press in the proceeding before the National Labor Relations Board, Second [fol. 579] District, and entitled "In the Matter of the Associated Press, a corporation, and American Newspaper Guild, Case No. II-C-28," a copy of which answer is annexed to the bill of complaint herein and marked Exhibit B.

That the complainant is a membership corporation organized and existing under and by virtue of the Membership Corporations Law of the State of New York, having been organized in the year 1900; that a membership corporation, as defined in Article One, Section 2, of said law, is a corporation not organized for pecuniary profit. Complainant is not authorized to make a profit or to make or declare dividends, nor is it engaged in the business of selling intelligence. The Associated Press has its own representatives and employees in important capitals and cities of the United States and in certain cities in foreign countries who obtain items of news, and it also has reciprocal arrangements with news agencies in foreign countries for the interchange of news. It has over 1350 members, each owning a newspaper published in various towns and cities throughout the United States; each of these members, as required by the By-Laws, supplies to The Associated Press the local news gathered by the member for the newspaper owned by him. News thus collected by the complainant is received at one of its offices and such news as to be sent to members is revised, edited or rewritten and thereafter transmitted. The operations of The Associated Press at its office in New York City involve three essential steps in respect of news with which it deals, namely (a) the collection of news by its own reporters or from its members or other sources, (b) the formulation or editing of such [fol. 580] news at its office in New York City, and (c) the transmission from its New York office of such formulated or edited news as the complainant has determined to send out as Associated Press news.

The complainant thus furnishes to its members in the cooperative manner outlined and through the newspapers to the public, accurate reports of events which are nonpartisan and without distortion or coloring to represent

different views of persons or groups; that in the gathering, formulating and furnishing of such news, it employs reporters, writers, editors and other employees, who are in a confidential relationship to the employer and one of reliance and trust in the unbiased reporting of news; that in formulating and furnishing such news, it directs and controls a large amount of the news published in the press of the United States and that any control and direction of the employment of such persons by governmental agencies would limit and restrict The Associated Press in gathering, preparation and dissemination of news for the press and abridge the freedom thereof.

That the complainant has been engaged in the collection, formulation and dissemination of news to its members for publication in newspapers throughout the United States since in or about the month of May, 1900, when it was organized as hereinabove alleged. During that period it has spent large sums of money in the conduct of its business and for several years last past the amounts so expended have exceeded the sum of seven million dollars in each year. By the cooperative manner in which the affairs of the complainant are conducted it has been able to develop an efficient news service covering the entire United States; [fol. 581] that the newspapers which publish the news of The Associated Press indicate the complainant as the source of news which is published in the newspapers of members and which is received from the complainant; that during the period of its operations, complainant has acquired the reputation for furnishing complete and accurate reports of news events of local and national importance and has acquired at great cost to itself and its members a public good will, which is of great value to complainant and its members. Inasmuch as its operations are confined to the gathering, formulation and dissemination of reports of events, its business depends almost wholly upon the ability and initiative of its employees in obtaining news and in writing and editing reports of events, so that the relations between the complainant and its employees are of paramount importance in the successful conduct of its affairs.

That there is hereto annexed a copy of the rules and regulations, Series 1, adopted by the National Labor Relations Board on September 14, 1935, which the said Board threat-

ens and intends to enforce against complainant with respect to the proceedings which have been filed against the complainant by the said Board. A copy of said rules and regulations was furnished to complainant at the time and notices of hearing set forth in the complaint were served upon it, and is referred to therein.

Jackson S. Elliott.

Sworn to before me this 16th day of January, 1936. M. F. Moran, Notary Public No. 912 New York County, Register No. 6-M-378. Commission Expires March 30, 1936.

[fol. 582] BOARD'S EXHIBIT 23

The number of employees of Associated Press is more than 1,700; and the annual payroll is in excess of $3,000,000.

The number of employees of Associated Press in the New York City office, exclusive of the general office executives, is more than 350; and the annual payroll for such employees is in excess of $800,000.

[fol. 583] BOARD'S EXHIBIT 23A

Exhibit "A"

The Associated Press

New York, N. Y.

Balance Sheet

as at December 31, 1935

Assets

Current Assets:		
Cash		
On Deposit	$426,734.85	
Petty Cash Working Funds	33,423.44	
		460,158.03
Investments—United States Government Securities (Book Value)		1,966,346.30
Accounts Receivable		
Supplemental and Foreign Services	5,926.35	
Miscellaneous	2,269.20	
		8,195.55
Accrued Interest Receivable on Investments		9,327.40
Total Current Assets		2,434,427.28

BOARD'S EXHIBIT 23A—Continued

Investment in and Advances to Affiliated Companies:			
Associated Press of Great Britain, Ltd. and Associated Press, G.m.b.H. (Including results of operations)			74,268.57
Wirephoto Equipment:			
Equipment (At Cost)		416,000.00	
Deduct: Reserve for Amortization, representing excess of Receipts from Members using Equipment over Expenses of Operation		274,560.77	
			141,439.23

[fol. 584]

Fixed Assets:

	Cost	Reserve for Depreciation	Balance	
Teletype Equipment	$1,164,434.53	$1,164,434.53	$	
Furniture and Fixture	279,626.36	232,633.22	46,993.14	
	$1,444,060.89	$1,397,067.75	$	46,993.14
Total				$2,697,128.80

Liabilities

Current Liabilities:			
Accounts Payable			$346,534.16
Due to Correspondents			9,708.44
Accrued Salaries			12,798.16
Total Current Liabilities			369,040.76
Gold Debenture Bonds:			
Due January 1. 2,000—Interest at 4% waived. Issued and Outstanding:			
Series "B"		$5,525.00	
Series "C"		230,000.00	
			235,525.00
Deferred Income:			
Assessments for 1936 Collected in Advance			105,046.90
Reserves:			
For Emergency Fund		1,000,000.00	
For Foreign Development		250,000.00	
For Insurance		16,000.00	
			1,266,000.00
Excess of Assets over Liabilities:			
Balance, January 1, 1935		579,556.59	
Add: Excess of Income over Expenses for the Year ended December 31, 1935		141,959.55	
Balance, December 31, 1935			721,516.14
Total			$2,697,128.80

[fol. 585] BOARD'S EXHIBIT 23B

Exhibit "B"

The Associated Press

New York, N. Y.

Statement of Income and Expense for the Year Ended December 31, 1935

Income:			
Assessments		$9,340,839.37	
Interest, etc		63,374.04	
			$9,404,213.41
Expenses:			
Outgoing News Service		5,571,263.78	
Incoming News Service		1,856,407.50	
Foreign News Service		796,549.18	
Administrative Expenses:			
Salaries	$244,877.88		
Contribution to the Employees' Benefit Fund	205,167.22		
Other Expenses	275,825.53		
		725,870.63	
Provision for Depreciation		37,602.00	
Amortization of Wirephoto Equipment		274,560.77	
			9,262,253.86
Excess of Income over Expenses:			
For the Year ended December 31, 1935, Exhibit "A"			$141,959.55

[fol. 586] Exhibit "C"

The Associated Press

New York, N. Y.

Employees' Benefit Fund as at December 31, 1935

Cash:			
On Deposit			$80,265.88
United States Government Securities:			
(Book Values)			1,316,250.00
Accounts Receivable:			
Accrued Interest on United States Government Securities		$7,902.76	
Accrued Interest on Active Mortgages		16,393.60	
Loans Receivable		8,395.48	
Due from Real Estate Agents for December Rents		1,187.26	
			33,879.10
Investments in Mortgages (Book Values)			
Active Mortgages	$1,117,014.70		
Taxes advanced for Mortgagors	2,195.84		
		1,119,210.54	
Mortgages in Default, including Taxes paid		36,023.84	
Mortgages under Foreclosure, including Taxes and Foreclosure Costs		173,644.48	
		1,328,878.86	
Mortgage Bondholders' Participation Certificates (Interest in default)		97,000.00	
			1,425,878.86
Investments in Real Estate			444,574.23
Total Fund, available for Pensions, Insurance and Sick Benefits			$3,300,948.07

[fol. 587] BOARD'S EXHIBIT 23c

Exhibit "D"

The Associated Press

New York, N. Y.

Employees' Benefit Fund

Statement of Income and Disbursements for the Year Ended December 31, 1935

Income:		
Contributions from The Associated Press		$205,167.22
Interest on United States Government Securities		44,396.47
Interest on Mortgages		82,941.88
Rental Income—Net		5,800.66
Refund of Foreclosure Expense paid in 1934		837.98
		339,144.21
Disbursements:		
Pensions	$51,161.10	
Disabilities	5,487.24	
Group Life Insurance	48,935.10	
Loss on Exchange of Mortgages for Home Owners Loan Corporation Bonds	4,142.11	
		109,725.55
Net Amount added to Fund during Year		$229,418.66

[fol. 588] RESPONDENT'S EXHIBIT 1

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. II-C-28

In the Matter of THE ASSOCIATED PRESS, a Corporation,

and

AMERICAN NEWSPAPER GUILD, by the National Executive Board Thereof

MOTION TO DISMISS

The National Labor Relations Board, by Elinore Morehouse Herrick, its Regional Director for the Second Region, having served upon the above named The Associated Press on December 4, 1935 (a) a complaint alleging that The Associated Press has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act and (b) a notice of hearing on the allegations of said complaint; and

The said The Associated Press having filed an answer to said complaint on December 18, 1935; and

The Associated Press not waiving but insisting that the [fol. 589] National Labor Relations Act is not in truth and fact a law and cannot be enforced by or through the purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director for the Second Region, its agents or otherwise; that said pretended statute is unconstitutional, void and of no force and effect for the reasons hereinafter stated; that said National Labor Relations Board is without authority in law to issue a complaint with respect to the alleged unfair labor practices above mentioned, or to issue any order or direction or notice to The Associated Press, or to conduct a hearing upon the aforesaid questions of unfair labor practices; and

The said hearing, after various adjournments, having been set for April 7, 1936;

Now, Therefore, The Associated Press, protesting against all acts of said Board and its agents in the premises, moves (1) to dismiss the aforesaid complaint of the National Labor Relations Board and (2) to set aside and cancel the said notice of hearing on the ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect for the following among other reasons:

(a) Said Act by its language, purpose and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereof;

(b) Said Act deprives the officers and directors of The [fol. 590] Associated Press and its members of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(c) Said Act deprives The Associated Press and its members of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(d) Said Act abridges the Freedom of The Associated Press and its members in gathering, formulating, transmitting and publishing news in the newspapers owned by members of The Associated Press, in violation of the Constitution of the United States and the First Amendment thereof;

and on the further ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect in so far as it purports to authorize a determination with respect to alleged unfair labor practices of The Associated Press since the said subject matter does not come within the commerce or other powers of Congress.

The Associated Press, by Davis Polk Wardwell, Gardiner & Reed, Attorneys for The Associated Press, 15 Broad Street, New York, N. Y.

[fol. 591] RESPONDENT'S EXHIBIT 2

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SECOND REGION

Case No. II-R-3

In the Matter of THE ASSOCIATED PRESS, a Corporation,

and

AMERICAN NEWSPAPER GUILD, by the National Executive Board Thereof

MOTION TO DISMISS

American Newspaper Guild, pursuant to Section 9 (c) of the National Labor Relations Act and the Rules and Regulations relating there-o, having heretofore filed with the purported National Labor Relations Board, Second Region, a petition verified December 4, 1935, for an investigation and certification of representatives of the employees in the editorial department, not engaged in an executive capacity, of The Associated Press; and

The purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director, for the Second Region, having heretofore served upon The Associated Press a notice of hearing upon the aforesaid question of representation, together with a copy of an order of the said Board dated December 16, 1935, providing that [fol. 592] the hearing be held in conjunction with a purported proceeding under Section 10 of said National Labor

Relations Act entitled "In the Matter of The Associated Press and the American Newspaper Guild" and known as Case No. II-C-28; and

The Associated Press not waiving but insisting that the National Labor Relations Act is not in truth and fact a law and can not be enforced by or through the purported National Labor Relations Board, by Elinore Morehouse Herrick, its purported Regional Director for the Second Region, its agents or otherwise; that said pretended statute is unconstitutional, void and of no force and effect for the reasons hereinafter stated; that said National Labor Relations Board is without authority in law to entertain a petition for investigation and certification of representatives pursuant to Section 9 (c) of the said National Labor Relations Act, or to issue any order or direction or notice to The Associated Press, or to conduct a hearing upon the aforesaid question of representation, or to select or designate a representative or representatives of such employees of The Associated Press, or to certify the name or names of the representative or representatives purportedly selected or designated by the said Board; and

The said hearing, after various adjournments, having been set for April 7, 1936;

Now, Therefore, The Associated Press, protesting against all acts of said Board and its agents in the premises, moves (1) to dismiss the aforesaid petition of the American [fol. 593] Newspaper Guild and (2) to set aside and cancel the said notice of hearing and the said order relating thereto on the ground that the National Labor Relations Act is void, unconstitutional, and of no force and effect for the following among other reasons:

(a) Said Act by its language, purpose and effect attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and in violation of the Tenth Amendment thereof;

(b) Said Act deprives the officers and directors of The Associated Press and its members of liberty without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(c) Said Act deprives The Associated Press and its members of property without due process of law, in violation of the Constitution of the United States and of the Fifth Amendment thereof;

(d) Said Act abridges the freedom of The Associated Press and its members in gathering, formulating, transmitting and publishing news in the newspapers owned by members of The Associated Press, in violation of the Constitution of the United States and the First Amendment thereof;

and on the further ground that the National Labor Relations Act is void, unconstitutional and of no force and effect in so far as it purports to authorize an investigation, hear-
[fol. 594] ing or certification relative to collective bargaining by or on behalf of the aforesaid employee unit with The Associated Press since the said matters do not come within the commerce or other powers of the Congress.

The Associated Press, by Davis, Polk, Wardwell, Gardiner & Reed, Attorneys for The Associated Press, 15 Broad Street, New York, N. Y.

[fol. 595] GUILD'S EXHIBITS 1 TO 10

These exhibits are omitted pursuant to the order of the Circuit Court of Appeals.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE ASSOCIATED PRESS

and

AMERICAN NEWSPAPER GUILD

Decision

STATEMENT OF THE CASE

On November 7, 1935, Jonathan Eddy, Executive Secretary of the National Executive Board of the American Newspaper Guild, hereinafter referred to as the Guild, filed with the Regional Director for the Second Region a charge that The Associated Press, New York, New York, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July

5, 1935, hereinafter referred to as the Act. On December 4, 1935, the Board issued a complaint against The Asso-
[fol. 596] ciated Press, hereinafter referred to as respondent. The complaint was signed by the Regional Director for the Second Region, and alleged that respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the Act.

In respect to the unfair labor practices, the complaint alleged in substance that respondent, by its officers and agents, terminated the employment of Morris Watson, an employee in its New York City office, for the reason that he joined and assisted the Guild, a labor organization, and, in particular, The Associated Press unit of the Guild, hereinafter referred to as the Guild unit, said acts being contrary to Section 8, subdivisions (1) and (3) of the Act.

The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. On December 16, 1935, the Board ordered that the hearing in this matter be held in conjunction with a hearing on a question concerning the representation of the editorial employees of respondent in its New York City office, now known as Case No. R-26. The hearing was postponed from time to time,* until on April 2, 1936, the Regional Director [fol. 597] issued a notice setting the hearing for April 7, 1936 which notice was duly served on the parties. Hearings were held in New York, N. Y., on April 7 and 8, 1936, before a Trial Examiner, Dean Charles E. Clark, of the Yale Law School, designated by order of the Board.

Respondent filed an answer to the complaint, admitting that it had terminated the employment of Morris Watson, but denying that the discharge was based on the fact that he had joined and assisted the Guild. At the hearing counsel for respondent appeared specially and moved that the

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* The postponements were the result of a bill in equity brought by The Associated Press in the United States District Court for the Southern District of New York to enjoin the hearing. The bill was dismissed on April 4, 1936, upon the motion of the Regional Director and Regional Attorney, defendants in the case.

complaint be dismissed on the grounds that the Act "attempts to regulate matters not within the powers conferred upon Congress by the Constitution of the United States and is in violation of the Tenth Amendment thereto;" that it is in violation of the First Amendment thereto in that, as attempted here to be applied, it abridges the freedom of the press, and is in violation also of the Fifth Amendment thereto. The Trial Examiner overruled the motion in so far as it rested on points "unconnected with interstate commerce". After a showing as to the nature of the activity of respondent, he overruled the motion on all grounds. The ruling is hereby affirmed. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

On April 23, 1936 the Trial Examiner filed an intermediate report finding that respondent had violated the Act in the respect and the manner alleged in the complaint. He recommended that Morris Watson be reinstated to his [fol. 598] former position and be made whole for any loss of pay suffered by reason of his discharge after deducting any amounts earned elsewhere.* A copy of the intermediate report was duly served, and respondent was given ten days to comply or file objections. Respondent has neither complied with nor filed objections to the intermediate report.

The Board is in accord with the findings made and conclusions reached by the Trial Examiner in the intermediate report. In the decision already issued in the representation case—No. R-26—many of the findings and conclusions of the Trial Examiner were incorporated. These findings, in so far as appropriate, are also embodied below with the addition of such other of the Trial Examiner's findings and our own as are necessary and appropriate.

Upon the evidence adduced at the hearing and from the entire record before it, including the pleadings filed, the

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*The Trial Examiner recommended also that respondent cease and desist from refusing to bargain collectively with its editorial employees through the Guild. Since the complaint did not charge respondent with failure to bargain collectively, we shall make no order with respect thereto.

transcript of hearing, the exhibits introduced, and the intermediate report, the Board makes the following:

Findings of Fact

I

The Associated Press

Respondent was organized in 1900 as a membership corporation of the State of New York, being a non-profit asso- [fol. 599] ciation of certain persons who, owning or representing certain newspapers, operated for profit, united in a mutual and cooperative association for the collection and interchange of information and intelligence for publication in the newspapers owned or represented by them. It has at present about 1350 members. Of the 2000 daily newspapers in the United States, approximately 1200 are members of respondent; included among them are newspapers in every State. Respondent has members also in Alaska, Argentina, Bolivia, China, Columbia, Costa Rica, Cuba, Dominican Republic, Dutch West Indies, Ecuador, Guatemala, Hawaii, Mexico, Panama, Paraguay, Peru, Philippines, Puerto Rico, Spain, Uruguay, and Venezuela. Each member is entitled to at least a minimum news service, and each member supplies to respondent local news gathered by him.

Each member of respondent has one vote. However, bonds may be issued up to the aggregate sum of $500,000, carrying a vote for each $25 but not to exceed $1,000 of registered bonds whereon interest is waived; on December 31, 1935, such bonds in the sum of $235,525 were outstanding, which, being substantially held by the larger newspapers, carried increased voting power to such newspapers to the extent indicated.

The balance sheet of respondent for the year 1935 showed assets of $2,697,128.80 and income of $9,404,213.41, an excess of $141,959.55 over its expenses of $9,262,253.86. The income, outside of interest amounting to $63,374.04, consisted exclusively of assessments levied upon its members according to a formula of assessment which, while [fol. 600] adjusted to the type and amount of service received, is based fundamentally upon the plan of distribut-

ing the cost of operation among its members in proportion to the population of the community served by each of them.

Advertised statements by respondent contain assertions that "it is the greatest clearing house for news in the world", and that "the revenues reach an annual aggregate of nearly $10,000,000, while the number of words daily received and transmitted at each of the more important offices is over 200,000, or the equivalent of 125 columns of the average newspaper". These statements were not controverted at the hearing, and the extensive operations of respondent in all parts of the world were amply demonstrated by all the evidence. It appears to be substantially larger than the other competing press agencies in the United States. These others are organized as commercial corporations.

Respondent has in excess of 1,700 employees and an annual pay roll in excess of $3,000,000.

The principal office of respondent is in New York City. It has its own representatives in important capitals and cities in the United States and in other parts of the world. It has an affiliate, The Associated Press of Great Britain, of which there is a branch office in Paris, whose function it is to obtain news pictures of news events abroad to be supplied to respondent. It also has an affiliate located in Berlin. It has reciprocal arrangements with important news agencies in foreign countries for the interchange of news: with Reuter, the Canadian Press—modeled after respondent—Domei-Tsuchin-Sha, a Japanese news bureau.

[fol. 601] Respondent has established division points throughout the United States, each of which is responsible for the collection of news from its territories and for its distribution. These divisions are the Eastern, with headquarters in New York City; the Southern, Atlanta, Georgia; the Central, Chicago, Illinois; the Western, San Francisco, California; and the Southwestern, Kansas City, Missouri. Each division has regional offices and member newspapers reporting to it. In addition, respondent has a special bureau at Washington, D. C., and a Foreign Service, operating from its New York City office with offices, staffs, and correspondents in Africa, Asia, Europe, and Central and South America. The control of news is extremely decentralized or "broken down". Each collecting agent—regional office, member newspaper, division point—deter-

mines the value to other regions, divisions, etc. of each item of news collected by or coming to it and sends it along to other points or distributes it throughout the territory of which it is the key point according to its judgment of its interest for those points. Consequently the individual editorial employee no matter where he may be situated has a measure of responsibility for the effective functioning of the entire system.

The usual method of communication is by "leased wires" (or special service by contract with the Western Union Telegraph Company, the American Telephone & Telegraph Company, and the Pacific Telephone & Telegraph Company) although all forms of communication—telephone, messenger, wireless, mail—are employed. From each division point there stretches out to the East, the West, the [fol. 602] North and South, trunk telegraph wires which are the principal intake and feeding lines for the division and which provide inter-divisional communication. Subsidiary regional circuits tie into the primary circuits. As news is received at a division headquarters, it is revised by editorial employees under the direction of supervising editors and then transmitted throughout the division and to the headquarters of other divisions to the extent warranted by the news. Each trunk line is controlled by a "filing editor" who must be aware of the capacity of the line, (i.e.) the amount of news which he can wire out during his shift—usually eight hours—and the amount of news which his line will be expected to receive; during his shift he is responsible for sending out—"filing"—over his line a "balanced" news report.

Respondent, through itself or its affiliates, also conducts extensive operations in the collection of photographs of persons and events which it transmits to and from Europe and among its members; when the immediate news value of these photographs is gone, they are sold to an agency for eventual use in magazines and other publications.

II

Operation of the New York Office; The Editorial Employees

The number of employees in the New York office of respondent, exclusive of the general office executives, is more

than 350, and its annual pay roll in that office in excess of $800,000.

[fol. 603] The editorial work in the New York City office of respondent is divided into various departments to facilitate the speedy and efficient operation of its business. An executive news editor, assisted by supervising editors and editorial employees, has general charge of the revision of the news as it is received from the filing editors in immediate charge of the wires to and from various places; and there are other departments or desks covering Foreign, City, Sports, Financial, News Photo, and Feature Service, as well as a morgue or library for retaining items of potential future value.

The filing editors supervise the news as it goes out on trunk or primary circuits and the secondary wires from New York City, including the North wire to New York State and New England and Boston, the South wire to Atlanta, there breaking into subdivided regional extensions, the main West wire (with a parallel wire for financial, commodity, and money market news) to Kansas City. with trunk wires there to the Pacific Coast and the Southwest, a "Metro" wire for the newspapers of Greater New York City, and state wires to New York and Pennsylvania. Such editors determine what news, from the vast amount of copy delivered to them, is to be sent on their respective wires; they supervise its rewriting, as they determine to be desirabl for the uses of their respective circuits, and its delivery to teletypewriter operators for transmission over such wires.

The operations described above are carried on in three daily shifts of employees; the day shift from 8:00 A. M. to 4:00 P. M., the night shift from 4:00 P. M. until midnight, and the early shift from midnight until 8:00 A. M. [fol. 604] The operations of the editors and editorial employees require a high degree of skill, for they must be able to determine the news value of items, and to rewrite copy with speed and the utmost accuracy, so that in the case of important news all the work on a particular item may be completed within a few minutes. Thus a story from abroad may be received, rewritten, and sent out over the leased wires in from 12 to 20 minutes, and an unusually important item, such as the death of the King of England, would be sent out in half that time. Less important news is handled

in a more leisurely way, but all news is perishable and very quickly becomes valueless for the purposes of respondent as soon as it becomes generally known through competing press agencies or otherwise.

The Feature Service supplies to the member newspapers special stories covering particular events, or recurring features, such as articles on sports or scientific events or surveys of the news. These are often sent out as the product of special staff employees, and published over the "by line" or name of the writer; and such assignments are naturally among those most desired and sought after by the editorial employees.

The mechanical operations of the transmission of news are conducted by the Traffic Department, the employees of which perform no editorial functions and who are not classed as editorial employees. The actual sending of the news by wire is performed by the telegraph companies the use of whose facilities is purchased by the respondent. At the time of the hearing, approximately 157 of the employees in New York City were classified as editorial em-
[fol. 605] ployees, including reporters and editors engaged in the preparation or revision of news for transmission and distribution in this country and abroad.

The operations of the respondent and of its editorial employees occur in the course and current of commerce among the several States and with foreign countries; are an integral part of the operations of the instrumentalities of such commerce; and constitute commerce among the several States and with foreign countries.

III

The Unfair Labor Practices

The charge against respondent is that it discharged Morris Watson because he "joined and assisted" the Guild and "engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection."

In 1933 the unrest which had developed among editorial employees and reporters of newspapers had become acute, due to lowering of wages generally and the elimination of various newspapers, notably "The New York World", the sale of which threw many such employees out of work. The

remuneration paid such employees was generally lower than that paid less highly skilled workers in the mechanical departments of newspaper service who had been organized in unions, who had had service contracts, and who had suffered less drastic wage cuts.

[fol. 606] In view of these conditions the American Newspaper Guild was organized to obtain the benefits of unionization for editorial employees and reporters of press associations and newspapers. It comprised a national organization, of which the New York Newspaper Guild was a branch and of which local units were installed in individual newspapers or press associations in about 70 cities. The Guild is a labor organization.

Watson has been a newspaper man since 1923 serving on various newspapers before he went with respondent. He has been a police reporter, general assignment reporter, motion picture critic, state editor, and picture editor. In 1928 he joined respondent's organization in Chicago. Charles E. Honce was central division news editor in Chicago for respondent. Watson worked there and in Springfield, Illinois, as a reporter and rewrite man. He covered important assignments: the senatorial campaign of J. Hamilton Lewis, the endurance flight of the Hunter brothers, the National Air Show, the court contest of the merger between the Bethlehem Steel Company and the Youngstown Sheet & Tube Company. Charles Honce who had since been transferred to New York praised Watson's work and in 1930 secured his transfer to the New York office. There he was given important reportorial assignments. His specialty seems to have been the covering of court trials: the trial of Senator James A. Davis on federal lottery charges, of William Graham and James C. McKay on mail fraud charges. He covered the non-technical angles of the Lenz-Cubertson bridge match. He interviewed im-

[fol. 607] portant personages: William Bullitt, Ramsay MacDonald, Maxim Litvinoff, J. P. Morgan, he being the only reporter who succeeded at the time in interviewing Mr. Morgan. As a reporter he scored a number of "beats"—i. e. he got stories to the newspaper before anyone else. On a number of these stories respondent received the compliments of the newspaper world. For his excellent work in this connection, Watson was given a raise in salary. Watson also did a great deal of rewrite work in the office,

the Lindbergh kidnapping being among the important stories on which he worked.

Watson joined the Guild at its inception in November, 1933; he was one of the organizers of The Associated Press Guild unit. He became Chairman of the unit; then Treasurer of the New York Guild, and at the same time Vice President for Wiring Services of the American Newspaper Guild, a position which he held at the time of his discharge by respondent. In November, 1933, Watson was a member of a committee which went to Washington to appear before the National Recovery Administration (NRA) hearing on the proposed newspaper code. He urged the administration to impose a code upon the Press Associations as well as on the newspapers. In December he was again in Washington, this time as a delegate to the organizing convention of the Guild. In cooperation with the Commercial Telegraphers Union of North America, he submitted to the NRA a proposed code for the Press Associations. On his return to New York, Elliott, Assistant General Manager of respondent in New York, berated Watson for cooperating with the Telegraphers Union; [fol. 608] unionization was "very foolish", he said. Various executives objected to an open letter he wrote on March 27, 1934, to General Johnson, NRA Administrator, criticizing the failure to establish a press association code, which letter was published in the Magazine "Editor and Publisher". Thereafter Elliott talked to him several times to the effect that unionization was not for newspaper men because of the special character of their work, stating on one occasion that he could not understand why a man of Watson's abilities and talent would be interested in a reporters' union, and saying, "You are the best reporter we have"; the General Manager of respondent, Kent Cooper, in the summer of 1934 told Watson he could not give him a foreign assignment so long as he was active in the Guild; in December, 1934, on the occasion of another NRA hearing in Washington, D. C., respondent's executives tried to prevent Watson's going, revoking for a time the permission for leave which had been given and which was ordinarily given under the circumstances, Watson having arranged with his relief man to do his work.

In July, 1934, the Guild unit adopted a resolution sponsored by Watson, addressed to the Guild, asking the Guild

to undertake collective bargaining on behalf of the unit. Among the points at issue an important one was the securing of a five-day week for editorial employees, instead of the six-day week then in force.

Thereafter the Guild sent to Frank B. Noyes and Kent Cooper, respondent's president and general manager respectively, formal letters, signed by the executive secretary [fol. 609] of the Guild and by Watson, asking for an appointment for the purposes of collective bargaining.

Thereafter the executives of respondent interviewed the editorial employees individually in respect to their Guild connections, and strongly objected to such connections, so that membership of the unit fell off sharply and the collection of dues likewise declined substantially. As a result the unit held a meeting on August 17, 1934, and suspended its request for collective bargaining pending the creation and report of a committee from the unit to discuss the matter with Cooper.

On the following day the committee of the Guild unit met with Cooper, who declined to bargain collectively, stating that he would quit his job rather than bargain with "an outsider"—referring to the Guild—and intimating that, if Guild activities were given up, the five-day week would be granted. He also stated that he had received many letters from respondent's members demanding the discharge of Watson and that every time Watson's "by line" was used on a story it brought protest from the members of The Associated Press because of his Guild activities.

Thereafter, on August 21, 1934, the Guild unit voted to suspend indefinitely its request for collective bargaining at a meeting which was largely attended, because respondent's executive actively worked to induce attendance and in some cases themselves relieved the employees of their duties to that end. The vote was taken against the protest of Watson that the action was a weakening of the Guild, and that the employees would hold the five-day week for only a little while.

[fol. 610] Thereupon respondent instituted the five-day week and continued it in force until October 7, 1935.

Thereafter the executives, at staff meetings held for the different shifts of employees, protested the action of the Guild unit in only suspending the request for collective bargaining and not rescinding it, asking the employees if

they were not thereby "binding themselves to outsiders and ceasing to be free agents", particularly unless they obtained back their authorizations to bargain collectively, which were held by Watson as an officer of the Guild unit and which he refused to deliver up.

Immediately after these events Watson was transferred to serve as filing editor of the South wire, a position for which he was not fitted either by experience or by temperament, because it involved sitting at a desk all day and did not employ his experience and skill as a reporter and was one where complaints were usual and the people served were difficult to please. The transfer was a punishment for Watson's Guild activities and was so considered by him and by the other employees.

Watson continued his work on the South wire until about January 1, 1935, and performed it satisfactorily, receiving only one complaint: respondent's Atlanta office objected to the prefix "Mrs." used in front of the name of a prominent married Negro woman, stating that they had repeatedly complained of calling a Negro "Mrs." or "Mr."

Watson continued his Guild activities after his transfer, being one of a delegation to call upon President Roosevelt [fol. 611] in November, 1934, to request a code for press associations, and in December, 1934, representing the Guild at a code hearing in Washington, D. C., against the protests and objections of respondent, as referred to above.

In January, 1935, a special department or desk was set up in respondent's New York office to handle the copy coming over five special wires from the Hauptmann murder trial in Flemington, New Jersey, and Watson was assigned as head of the desk with one assistant. During the period of about a month while the trial lasted, he had full charge on the day shift of supervising the sending out of news of that trial, which was the most important news event of the period. Watson was asked to assume this important responsibility because respondent at that time had no other available and sufficiently experienced and capable man, and his service in that capacity was much praised by member editors. At the conclusion of the Hauptmann trial and as a result of the difficult and strenuous activities connected therewith, following his harsh and unpleasant experience on the South wire, Watson had an illness in the nature of a breakdown, causing him to take two weeks' leave in addition to his regular vacation period.

Thereafter Watson continued his Guild activities and in the summer of 1935 was spokesman for the Newspaper Guild of New York in attempting to negotiate with the "Brooklyn Eagle", a member newspaper of The Associated Press.

Immediately thereafter Watson was transferred to the early shift, from 12:00 midnight to 8:00 A. M., in spite of [fol. 612] the fact that the day city news editor had requested his services for that staff and that by long tradition in respondent's office the day city editor had always his pick of men, since it was the most desired of the positions open to editorial employees. Work on the early shift is not desired, since it is routine activity, without outside assignments of special reporting, along the lines for which Watson had shown himself peculiarly fitted, and particularly unpleasant in the matter of hours for a man who, like Watson, lived with his family. It was customary for respondent to put its less experienced men on the early shift, and the assignment of Watson to it was as punishment for his Guild activities. Watson protested many times against this transfer to his executive news editor, J. M. Kendrick, and asserted that it was punishment for his representation of the "Brooklyn Eagle"; Kendrick denied that he knew of the affair of the "Brooklyn Eagle", but did say that Watson's activities with the Guild had lessened his value to respondent and that, if he had said the things about respondent which Watson had, then he would quit it.

Thereafter Watson served on the early shift until his discharge. Even here he was called upon to handle certain important news items, one being the events wherein the steamer "Dixie" struck a reef and at the same time a hurricane struck Florida, and the other being the death of Senator Huey Long of Louisiana. On both of these the headlines sent in from the local representatives of respondent at the scenes of the news were held unsatisfactory by the new editor; they were rewritten under Watson's direc- [fol. 613] tion though credited to the local offices, and as a result the local offices were complimented by respondent's general manager and members upon their handling of the news.

While the story of the "Dixie" was still being reported, Kendrick wrote a note to the acting early editor on official white paper of the kind used to make up personnel records

of the employees, and not upon the message paper ordinarily used for general directions to editorial employees, which note stated: "Tell Watson to give it all he has. His work the last two nights has not been up to snuff."

On October 7, 1935, the editorial employees were notified that the five-day week was withdrawn and that a six-day week was effective at once. On October 9, 1935, Watson introduced before the Guild unit a resolution, asking the Guild to begin collective bargaining on behalf of the unit. The resolution recited particularly the fact that the respondent had rescheduled the six-day week without notice to the workers and without affording opportunity for discussion or adjustment; it asserted that an agreement continuing the policy of the five-day week was needed to safeguard the interests of employees and was otherwise fair and equitable. It was resolved that the Guild by its proper committee should act as the exclusive representative of the unit for the purpose of collective bargaining in respect of conditions of employment and particularly in respect of hours of employment. A referendum on the resolution was completed on October 11, 1935. Seventy-two voted on the referendum and the vote was all but unanimous in favor of and adopting the resolution. At the time, the Guild contained about 95 or 96 members.

[fol. 614] On October 17, 1935, the Guild, by its National Executive Board (that being the board or committee which, under the constitution of the Guild, was authorized to conduct collective bargaining for guild units), wrote to Kent Cooper, respondent's general manager, referring to the resolution by the unit adopted on October 11, 1935, and asking for an opportunity to "discuss with you the subject of hours and conditions of employment, with the purpose in view of negotiating a collective agreement."

This letter was received by respondent the next day, October 18, 1935. Thereupon Watson was discharged, with a month's pay in advance, the executive news editor Kendrick stating to him as the reason, "Because we are dissatisfied with your work, you are dissatisfied with us, and I am convinced that you will be happier elsewhere." Kendrick on that day had recommended to Cooper, respondent's general manager, that Watson be discharged for five reasons, of which the second was, "He is an agitator and disturbs the morale of the staff at a time when we need especially

their loyalty and best performance". Cooper had approved the recommendation with the notation, "But solely on grounds of his work not being on a basis for which he has shown capability," with the "But" heavily written in pencil and the "solely" underlined.

Since October 18, 1935, Watson has not been employed by respondent, and has been refused reemployment, although he has been ready, able, and willing to work for respondent. Watson secured work from the Federal Theatre Project of the Works Progress Administration of the United States Government, and was employed by them from November [fol. 615] 21, 1935, to the time of the hearing as manager-producer of "The Living Newspaper," at a salary of $200 a month; whereas his salary paid by respondent prior to November 18, 1935, had been at the rate of $295 a month.

On October 22, 1935, Cooper replied to the letter of the Guild of October 17, 1935, and stated, among other things, that he could not without instructions from his board of directors "consider negotiations with outsiders looking toward such an eventuality as you have suggested." Thereafter further correspondence was had between the attorneys for the Guild and respondent's executives, wherein the former pressed for a hearing to discuss collective bargaining and the latter referred the matter to the meeting of respondent's board of directors to be held in January.

After the discharge of Watson membership in the Guild fell off to about 85 and there was a falling off in the collection of dues; at the time of the hearing the membership was increasing and the collection of dues had improved. The reduction in Guild membership was due directly to the opposition of respondent to the Guild activities and the fear of the employees of reprisals for such activities.

We think that it is beyond dispute that Watson was discharged and discriminated against in regard to hire and tenure of employment to discourage membership in the Guild. Respondent did not choose by evidence to rebut the clear implications of the Board's testimony, but chose, rather, to rely on its point that the Board is without jurisdiction in the premises. We find further that by the discharge of Morris Watson respondent has interfered with, [fol. 616] restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The aforesaid acts of respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. Watson and the other editorial employees of respondent at its New York office in the activities hereinbefore described were directly engaged in interstate and foreign commerce by facilitating and making possible the flow of news from place to place throughout this country and other countries; and any interference with or cessation of such activities would hamper, impede, and interfere with such commerce.

Any cessation of editorial activities at the New York office would cause a break in the flow of foreign news and of some of the important domestic news and, until such break could be repaired or in some manner overcome, would seriously impede, if not prevent, the issuance of newspapers in all parts of the country. Random daily tests of the dependence of newspapers variously located on respondent's continued service showed a paper in Dayton, Ohio, with nineteen stories and one photograph on its front page credited to respondent; one in Portland, Maine, with eight such stories and one photograph; one in San Francisco, California, with nine such stories; one in Phoenix, Arizona, with eleven such stories; one in Memphis, Tennessee, with twenty-seven such stories; and with each of such papers carrying, in addition to such stories appearing on its front page, many other such stories on other pages.

The facts as to the wide extent and character of respondent's business were presented by the assistant general manager of respondent (produced as a witness at the re- [fol. 617] quest of the Board), by documentary evidence, by the allegations of the respondent in its answer and motions in this matter, and by its affidavit in the injunction suit brought to restrain these proceedings. While respondent took no part in the production of evidence referring to the discharge of Watson, nevertheless the documentary and other evidence respecting it was clear and decisive. It is clear that respondent's challenge to these proceedings is based not on any substantial dispute as to the facts, but upon its claim that there are factors peculiar to its business, requiring accuracy in news gathering and freedom of the press, which make the Act inapplicable or invalid with respect to it. Yet the policy of the Act seems clearly applicable to the situation here disclosed; and, pursuant to its policy, ac-

curacy or other requirements of this form of employment would appear not to be hampered, but even promoted by the presence of contented employees under labor relations determined by the Congress to be generally desirable, and freedom of the press would be facilitated by a freedom of organization granted to its highest skilled, equally with its other, employees.

Conclusions of Law

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

1. The American Newspaper Guild is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

[fol. 618] 2. Respondent, by discriminating in regard to the hire and tenure of employment of Morris Watson, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. Respondent, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

4. Such unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Order

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the Act, the Board hereby orders that respondent, The Associated Press, and its officers and agents shall:

1. Cease and desist:

(a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its

employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; and

[fol. 619] (b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employes; and

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Morris Watson immediate and full reinstatement to his former position, without prejudice to any rights and privileges previously enjoyed by him.

(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

[fol. 620] (c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Signed at Washington, D. C., this 21st day of May, 1936.

J. Warren Madden, Chairman; John M. Carmody, Member; Edwin S. Smith, Member, National Labor Relations Board. (Seal.)

[fol. 621] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the printed record in the above named case consist of the following:

(1) the entire record as certified to the Court by the National Labor Relations Board in the matter before it known as case No. C-84, which is No. 466 before this Court, except

(a) the ten (10) newspapers introduced in evidence before the National Labor Relations Board, known as Guild Exhibits #1 to #10, inclusive;

(b) Charter and By-Laws of The Associated Press, known as Board Exhibit #4;

(c) Associated Press Directory, known as Board Exhibit #9;

[fol. 622] (d) Bulletin announcing Associated Press news picture by wire, known as Board Exhibit #10.

And it is further stipulated and agreed that the aforementioned exhibits need not be printed in the record but shall be considered along with and as part of the record, with right reserved to either of the parties to have the said exhibits printed and incorporated into the printed record in the event that appeal is later taken.

Charles Fahy, David A. Moscovitz, Attorneys for Petitioner, National Labor Relations Board.
Davis, Polk, Wardwell, Gardiner & Reed, Attorneys for Respondent, The Associated Press.

Dated, New York, N. Y., June 3, 1936.

[fol. 623] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

ORDER AS TO RECORD

Upon stipulation of the parties and having heard counsel and due consideration having been given, it is ordered

that the printed record in the above named case consist of the following:

(1) the entire record as certified to the Court by the National Labor Relations Board in the matter before it known as case No. C-84, which is No. 466 before this Court, except

(a) the ten (10) newspapers introduced in evidence befor the National Labor Relations Board, known as Guild Exhibits #1 to #10, inclusive;

(b) Charter and By-Laws of The Associated Press, known as Board Exhibit #4;

(c) Associated Press Directory, known as Board Exhibit #9;

[fol. 624] (d) Bulletin announcing Associated Press news picture by wire, known as Board Exhibit #10.

And it is further ordered that the aforementioned exhibits need not be printed in the record but shall be considered along with and as part of the record, with right reserved to either of the parties to have the said exhibits printed and incorporated into the printed record in the event that appeal is later taken.

And it is further ordered that the National Labor Relations Board submit to the Court the aforelisted and described physical exhibits.

By the Court:

Martin T. Manton, United States Circuit Court Judge.

Dated, New York, N. Y., June 4th, 1936.

[fol. 625] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1935

Argued June 16, 1936. Decided July 13, 1936

No. 460

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

THE ASSOCIATED PRESS, Respondent

Petition from Order of the National Labor Relations Board

Before Manton, Swan, and Augustus N. Hand, Circuit Judges

Petition by the National Labor Relations Board to enforce an order issued against the respondent, the Associated Press. Petition granted.

Charles Fahy, Gen. Counsel, and Robert B. Watts, Associate Gen. Counsel, both of Washington, D. C. (Louis A. Jaffer and Philip Levy, both of New York City, and David A. Moscovitz, of Washington, D. C., of counsel), for petitioner.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City (John W. Davis, William C. Cannon, and Harold W. Bissell, all of New York City, of counsel), for respondent.

Greenbaum, Wolff & Ernst, of New York City (Morris L. Ernst and Callman Gottesman, both of New York City, of counsel), for American Newspaper Guild as amicus curiæ.

OPINION

MANTON, Circuit Judge:

This petition seeks the enforcement of an order issued by the petitioner pursuant to section 10 of the National Labor Relations Act (July 5, 1935, 49 Stat. 449, 29 U. S. C. A. § 151 et seq.). Respondent is a New York corporation, with its principal office in New York City, where the alleged unfair labor practice occurred.

November 7, 1935, the American Newspaper Guild, a labor organization, filed charges against respondent with the National Labor Relations Board, which accordingly issued

its complaint alleging that respondent was engaged in the purchase, collection, receipt, compilation, and formulation of intelligence from within and without the United States and in the sale, distribution, and transmission of the same throughout the United States; that, in violation of section 8 (1 and 3) of the act, 29 U. S. C. A. § 158 (1 and 3), it had discharged and refused to reinstate one Watson, employed by it in an editorial capacity, because of his membership and activity in the American Newspaper Guild. Respondent is alleged to have thereby engaged in unfair labor practices affecting commerce as defined in the act. Respondent by answer admitted the discharge of Watson, but denied that the reason therefor was his membership in the American Newspaper Guild. An examiner held hearings on the complaint, but respondent, after participating in so much of the hearings as established the nature of its business, when its motion to dismiss on constitutional grounds was denied, withdrew. After further hearings, the examiner recommended reinstatement of Watson and payment of lost wages. This report was confirmed by the board which set forth its findings of facts and order. The present proceeding is a petition for the enforcement of this order.

The act creates the National Labor Relations Board and provides administrative and court procedure for the prevention of certain listed unfair labor practices "affecting [fol. 626] commerce." Section 10 (a), (—) U. S. C. A. § 160 (a). "Affecting commerce" is defined as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." Section 2 (7), 29 U. S. C. A. § 152 (7).

And "commerce" means "trade, traffic, commerce, transportation, or communication among the several States." Section 2 (6), 29 U. S. C. A. § 152 (6). Section 7 of the act, 29 U. S. C. A. § 157, proclaims the right of employees to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. Section 8 gives specific content to the principles declared in section 7 and lists five unfair labor practices on the part of employers. It is an unfair labor

practice for an employer "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]," or "(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

General rules and regulations later adopted incorporated in detail the board's procedure.

The board found respondent, a membership corporation, to be a co-operative association of persons representing newspapers, with about 1,350 members, 1,200 of them daily newspapers. It receives information and gathers intelligence and information from members and other sources in all parts of the United States and in foreign countries, and formulates and distributes this to its members. It is affiliated with the Associated Press of Great Britain, which has a branch office in Paris, and news agencies associated with it are located in Berlin, Canada, and Japan. Respondent has division points throughout the United States for the collection of news. Each division has regional offices and membership newspapers reporting to it. Control over news is decentralized. Each collecting agent—regional office, member newspaper, division point—determines the value to other regions, divisions, and members of each item of news collected by or coming to it, and after editing, sends it along to other points or distributes it throughout the territory of which it is the key point according to its judgment of its interests for those points. The individual editorial employee preparing each particular item assumes a measure of responsibility for the effective functioning of the entire system. The method of communication is through the communication companies' telephone and telegraph trunk wires running from each division point.

As news is received in New York City, it is revised by editorial employees under the direction of supervising editors and then transmitted throughout the division and to the headquarters of other divisions to the extent warranted by the news. Each trunk line is controlled by a filing editor, who necessarily must be aware of the capacity of his line. During his shift, he is responsible for sending out—filing—over his line a "balanced" news report. Thus the editor and editorial employees are trained to be able

to determine the news value of items and to rewrite copy with speed and accuracy so that in the case of important news all the work on a particular item may be completed within a few minutes.

All those employees who are directly engaged in the transmission or distribution of news are in a "traffic department." The editorial employees are in the "news department," which includes the filing editors who determine what news is to go out on particular wires and who hand the typed items so prepared to members of the "traffic department" for transmission.

Watson was a member of the "news department." For a time he was a filing editor, but at the time of his discharge he was engaged in the revision or rewriting of news coming in over the wires prior to its distribution and filing as outgoing news.

The board's finding recites that "the operations of the respondent and of its editorial employees occur in the course and current of commerce among the several States and with foreign countries; are an integral part of the operations of the instrumentalities of such commerce; and [fol. 627] constitute commerce among the several States and with foreign countries."

In its treatment of Watson, the respondent was found to have engaged in an unfair labor practice, which occurred in the course and current of commerce among the states and with foreign nations, and tended to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The order issued directed the respondent to cease and desist from discouraging membership in the American Newspaper Guild or in any other organization of its employees by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the guild or any other labor organization of its employees, and from in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the guild or any other labor organization of its employees, and from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights as guaranteed in section 7 of the National Labor Relations Act (29 U. S. C. A. § 157). Notice of compliance with the order was to

be posted in the New York office. Respondent was also ordered to offer full reinstatement to Watson and to make up his lost pay.

The findings of the board as to the facts, if supported by evidence, are made conclusive by section 10 (c), 29 U. S. C. A. § 160 (c). See, also, Helvering v. Rankin, 295 U. S. 123, 131, 55 S. Ct. 732, 79 L. Ed. 1343; Florida v. United States, 292 U. S. 1, 12, 54 S. Ct. 603, 78 L. Ed. 1077; Federal Trade Commission v. Algoma Lumber Co., 291 U. S. 67, 73, 54 S. Ct. 315, 78 L. Ed. 655. We must accept the fact that Watson was discharged because of his labor activities.

The relation of employer and employee in local industries, not directly affecting interstate commerce, is not subject to federal regulation under the commerce clause. Schechter Poultry Corporation v. United States, 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A. L. R. 947; Carter v. Carter Coal Co., 56 S. Ct. 855, 869, 80 L. Ed. —. In United States v. E. C. Knight Co., 156 U. S. 1, 12, 13, 15 S Ct. 249, 253, 39 L. Ed. 325, the court said: "Doubtless the power to control the manufacture of a given thing involves, in a certain sense, the control of its disposition, but this is a secondary, and not the primary, sense; and, although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. * * * The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce."

In Carter v. Carter Coal Co., supra, the court said: "One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power Co. v. Pfost, 286 U. S. 165, 182, 52

S. Ct. 548, 76 L. Ed. 1038. Production is not commerce; but a step in preparation for commerce. Chassaniol v. Greenwood, 291 U. S. 584, 587, 54 S. Ct. 541, 78 L. Ed. 1004."

But the federal power to regulate interstate communication which constitutes interstate commerce has been established so far as the instrumentalities of interstate communication are concerned, as in the regulation of telegraph companies or broadcasting stations. Pensacola Teleg. Co. v. Western U. Teleg. Co., 96 U. S. 1, 9, 10, 24 L. Ed. 708; Federal Radio Comm. v. Nelson Bros. Co., 289 U. S. 266, 279, 53 S. Ct. 627, 77 L. Ed. 1166, 89 A. L. R. 406; Fisher's Blend Station v. Tax Commission, 56 S. Ct. 608, 80 L. Ed. —. The business of respondent which merely is a special form or instance of interstate communication is included in the concept of interstate commerce. Transmission of intelligence across the state lines in its nature, is a form of intercourse or com- [fol. 628] merce among the state. In International Textbook Co. v. Pigg, 217 U. S. 91, at page 107, 30 S. Ct. 481, 485, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, where the question was one involving the attempt by a state to require a license before allowing a foreign correspondence school to do business within the state, the court said: "If intercourse between persons in different states by means of telegraphic messages conveying intelligence or information is commerce among the States, * * * we cannot doubt that intercourse or communication between persons in different states, by means of correspondence through the mails, is commerce among the states within the meaning of the Constitution, especially where, as here, such intercourse and communication really relate to matters of regular, continuous business."

It appears clear that respondent in its business of gathering and distributing news is engaged in interstate commerce.

In Stafford v. Wallace, 258 U. S. 495, 521, 42 S. Ct. 397, 403, 66 L. Ed. 735, 23 A. L. R. 229, the court said: "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its

judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent."

See, also, Board of Trade of City of Chicago v. Olsen, 262 U. S. 1, 37, 38, 40, 43 S. Ct. 470, 67 L. Ed. 839.

Industrial disputes in an industry or business engaged in interstate commerce may, and frequently do, burden and interrupt the flow of such commerce. Congress recognized this in section 1 of the act (29 U. S. C. A. § 151). The courts have done likewise. Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196; American Steel Foundries v. Tri-City, etc., Council, 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360; Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963.

The removal from an instrumentality of commerce, or from a business engaged in interstate commerce, or from a business truly constituting a "throat" through which the current of commerce flows, of a fact determined by experience to be the cause of such disturbances, was within the power of Congress because it directly affected interstate commerce. Anderson v. Shipowners' Ass'n, 272 U. S. 359, 47 S. Ct. 125, 71 L. Ed. 298.

In respondent's business, although some of the news is obtained by the reporters locally, many dispatches come in from other states or foreign countries. All the news must be written or rewritten and is then given to operators of transmission instruments by responsible persons according to the needs of the members of the respondent in the various parts of the United States. A labor dispute affecting the rewriting staff would be a dam to the flow of this news and might or would cut off interstate and foreign receipts and transmission. Congress, recognizing this, had power under the commerce clause to enact suitable legislation to deal with practices which have been shown to obstruct or burden interstate commerce. Stafford v. Wallace; Board of Trade of City of Chicago v. Olsen, supra.

Industrial disputes in railroad systems, engaged in interstate commerce, were considered by the Supreme Court in passing on the Railroad Act of 1926 (44 Stat. 577), amended in 1934 (48 Stat. 1186, 45 U. S. C. A. § 151 et seq.), as that of self-organizing and collective bargaining by labor. Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S.

Clerks, 281 U. S. 548, 50 S. Ct. 427, 434, 74 L. Ed. 1034. The court recognized the fact that labor disputes constituted a threat to interstate commerce and that a guarantee of the right of employees to bargain collectively would tend to reduce such disputes. It upheld the validity of the Railroad Labor Act under the commerce clause, saying: "Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice."

[fol. 629] The employees in that case were baggagemen, ticket agents, train dispatchers, and similar clerical workers. In the instant case, the employees unit involved rewrites items of materials received and supervises and controls their transmission. Watson's work and that of the other editorial employees is an important factor in respondent's system of interstate and foreign intercourse. If Congress may, in order to facilitate the amicable settlement of labor disputes, seek to make "the appropriate collective action" of employees on interstate railroads "an instrument of peace rather than of strife," it may do so with respect to an interstate system devoted to interstate communication. Virginian Ry. Co. v. System Federation No. 40, — F. (2d) — (C. C. A. 4, June 18, 1936), is a recent demonstration that the scope of the federal power is not limited to those employees actually engaged in interstate commerce, or upon an instrumentality of commerce. In Carter v. Carter Coal Co., supra, the Supreme Court recognized the class of cases exemplified by Swift & Co. v. United States, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518, which "rests upon the circumstance that the acts in question constituted direct interferences with the 'flow' of commerce among the states. In the Swift & Co. Case, livestock was consigned and delivered to stockyards—not as a place of final destination, but, as the court said in Stafford v. Wallace, 258 U. S. 495, 516, 42 S. Ct. 397, 402, 66 L. Ed. 735, 23 A. L. R. 229, 'a throat through which the current flows.' The sales which ensued merely changed the private interest in the subject of the current without interfering with its continuity. Industrial Ass'n v. United States, 268 U. S. 64, 79, 45 S. Ct. 403, 69 L. Ed. 849." In the present

case, the editing of a message in interstate commerce is not a break in continuity equivalent to manufacturing a finished product from raw materials. Consequently, it is within the federal regulatory power.

The order promulgated by the board concerns protection of the right of self-organization under section 8 (1, 3), 29 U. S. C. A. § 158 (1, 3). Due process under the Fifth Amendment has not been contravened by this legislation. In Nebbia v. New York, 291 U. S. 502, 527, 528, 54 S. Ct. 505, 512, 78 L. Ed. 940, 89 A. L. R. 1469, the court said: "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases." And 291 U. S. 502, at page 525, 54 S. Ct. 505, 510, 78 L. Ed. 940, 89 A. L. R. 1469: "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

The right of employees to organize has been recognized and accepted. See Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 570, 50 S. Ct. 427, 74 L. Ed. 1034; American Steel Foundries v. Tri-City, etc., Council, 257 U. S. 184, 209, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360. When employers attempt to destroy this right and disregard the representatives chosen by their employees, the strike is the natural and common method of employees to force recognition. It is not an unreasonable method of reducing the danger of strikes, destructive of commerce, to guarantee freedom from interference to employees in those businesses where a strike would have a direct and paralyzing effect on interstate commerce. Although there is no denial in the act, of the employees' right to strike, a provocative cause is removed when employees are assured the opportunity to assert their rights in union. Statistics in the record show the frequency of strikes for organizational purposes. The experience under the Railroad Labor Act (45 U. S. C. A. § 151 et seq.) demonstrates

the efficiency in reducing strikes of the guaranty of the right to bargain collectively.

This act does not hamper the legitimate right of the employer, who may discharge his employees for inefficiency or any other cause agreeable to him, provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively. [fol. 630] The employer retains full control to bargain with his employees over the wage he shall pay and the working conditions he shall furnish. He remains the master of the operation of his business.

We think the order entered was validly made by the board and must be enforced.

Petition granted.

[fol. 631] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

THE ASSOCIATED PRESS, Respondent

ORDER GRANTING PETITION—Filed July 20, 1936

A petition having been filed herein by counsel for the National Labor Relations Board for the enforcement of an order issued against the respondent;

Upon consideration thereof it is

Ordered that said petition be and hereby is granted.

Wm. Parkin, Clerk.

[fol. 632] [File endorsement omitted.]

[fol. 633] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 634] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 26, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 324.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SEP 14 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States.

October Term, 1936.

No. 365

THE ASSOCIATED PRESS,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.

THE BALLOU PRESS NEW YORK

INDEX.

PAGE

PETITION FOR A WRIT OF CERTIORARI: 1
Summary Statement of the Matter Involved 2
Reasons Relied on for the Allowance of the Writ 4
Prayer for Writ 6

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI. 7
Opinion Below 7
Jurisdiction 7
Statute Involved 7
Statement of the Case 7
Specification of Errors 8

ARGUMENT 9

POINT I. The relation of employer with employee does not directly affect commerce and is therefore not subject to regulation by Congress 9

POINT II. The work done by Watson and by the petitioner's other editorial employees was not in interstate commerce or in a "throat" of such commerce ... 13

POINT III. The National Labor Relations Act violates the Fifth Amendment and is void, because it does not seek legitimate ends, and its terms are arbitrary, unreasonable and capricious 15

POINT IV. The National Labor Relations Act contravenes the First Amendment 18

CONCLUSION 19

Table of Cases Cited.

PAGE

Adair v. United States, 208 U. S. 161 ..... 9, 16
Adkins v. Childrens Hospital, 261 U. S. 525 16
Allgeyer v. Louisiana, 165 U. S. 578 16
Arkadelphia Co. v. St. Louis S. W. Ry. Co., 249 U. S. 134 14
Armour & Co. v. North Dakota, 240 U. S. 510 14
Bendix Producta Corporation v. L. W. Beman, 14 F. Supp. 58 ..... 5, 18
Bethlehem Shipbuilding Corp. Ltd. v. Myers, et al (unreported) 6
Block v. Hirsh, 256 U. S. 135 16
Bunting v. Oregon, 243 U. S. 426 16
Butchers Union Slaughter-house Co. v. Live-stock Co., 111 U. S. 746 16
Carter v. Carter Coal Company, 297 U. S. 9, 17
Coppage v. Kansas, 236 U. S. 1 16
El Paso Electric Co. v. Elliott et al, 15 F. Supp. 81 ... 6
Freuhauf Trailer Co. v. National Labor Relations Board (unreported) 5
Hall v. Geiger-Jones Co., 242 U. S. 539 16
Holden v. Hardy, 169 U. S. 366 16
Knoxville Iron Co. v. Harbison, 183 U. S. 13 16
McLean v. Arkansas, 211 U. S. 539 16
Morehead v. Tipaldo, 297 U. S. 15
Miller v. Oregon, 208 U. S. 412 16
Murphy v. Sardell, 269 U. S. 530 16
National Labor Relations Board v. Friedman-Harry Marks Clothing Co. Inc. (unreported) 5, 15

PAGE

National Labor Relations Board v. Jones & Laughlin Steel Corp. (unreported) 4, 15
Nebbia v. New York, 291 U. S. 502 16
Pennsylvania Railroad Co. v. Labor Board, 261 U. S. 72 10
Pennsylvania R. R. System etc. v. Pennsylvania R. R. Co., 267 U. S. 203 10
Peterson Baking Co. v. Bryan, 290 U. S. 570 16
Railroad Retirement Board v. Alton R. Co., 295 U. S. 330 11
Ribnik v. McBride, 277 U. S. 350 16
Schechter Corp. v. United States, 295 U. S. 495 9
Schmidinger v. Chicago, 226 U. S. 578 16
Stout et al v. Pratt et al, 12 F. Supp. 864 5
Texas & New Orleans Railroad Company et al v. Brotherhood of Railway & Steamship Clerks et al., 281 U. S. 548 12
Wilson v. New, 243 U. S. 332 11
Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522 11

Table of Statutes Cited.

Act of March 3, 1891 (26 Stat. 828) 7
Act of February 13, 1925 (43 Stat. 938) 7
Act of July 5, 1935 (49 Stat. 449-457) 7

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1936.

THE ASSOCIATED PRESS,
Petitioner,
against
NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The Associated Press petitions for a writ of certiorari to review a decision of the Circuit Court of Appeals for the Second Circuit, rendered July 13, 1936, in *National Labor Relations Board* v. *The Associated Press* (unreported) granting the petition of the National Labor Relations Board for enforcement of its order of May 21, 1936, requiring The Associated Press to:

"1. Cease and desist:

(a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Morris Watson immediate and full reinstatement, to his former position, without prejudice to any rights and privileges previously enjoyed by him.

(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

(c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting." (R. 3).

The opinion of the Circuit Court of Appeals is not reported but may be found at pages 436-445 of the record.

Summary Statement of the Matter Involved.

The petitioner, The Associated Press, is a membership corporation organized and existing under the laws of the State

of New York, engaged in the purchase, collection, receipt, compilation and formulation of intelligence. The petitioner has a membership of owners of over thirteen hundred morning, evening, and Sunday newspapers to whom it distributes such news as it collects.

In its New York office the petitioner has two Departments, the Traffic Department and the News Department. Employees engaged in the physical transmission or distribution of news are in the Traffic Department; the executives and editorial employees, engaged in the collection or formulation of news, are in the News Department.

On October 18, 1935, the petitioner discharged Morris Watson, an editorial employee, engaged in obtaining, composing, writing and editing items of news.

On November 7, 1935, the American Newspaper Guild, a labor organization, filed charges with the National Labor Relations Board against The Associated Press, alleging that in discharging Watson the petitioner herein had engaged in unfair labor practices in contravention of Section 8 of the National Labor Relations Act (R. 10-11). Thereupon on December 4, 1935, a complaint was served by said Board on the petitioner herein, which alleged that in violation of Sections 8(1) and (3) of the National Labor Relations Act it had discharged and refused to reinstate said Watson (R. 12-15). The Associated Press by answer admitted the discharge of Watson but denied that the discharge was due to the fact that Watson had joined and assisted the Guild or engaged in labor activities (R. 16-21). Hearings on the complaint were held before an Examiner. The petitioner herein moved to dismiss the complaint on constitutional grounds, its motion was denied, and it withdrew. After further hearings,

the Examiner recommended reinstatement of Watson and payment of lost wages (R. 416-432). This report was confirmed by the Board and an order entered to that effect (R. 432-433). The Board then petitioned the Circuit Court of Appeals for the Second Circuit for the enforcement of this order (R. 1-4). After a hearing before that Court on June 15, 1936, at which the application of the Act to the petitioner and its constitutionality were fully argued, that Court granted the petition of the Board (R. 445). It is from this decree that petitioner applies for a writ of certiorari.

B.

Reasons Relied on for the Allowance of the Writ.

I. The permissible applicability of the National Labor Relations Act and its constitutionality are important questions of Federal law, which have not been, but which should be, settled by this Court.

Many cases involving the constitutionality of this Act, brought both by the Labor Relations Board for enforcement of its orders and by various employers to restrain the Board from taking action under the Act, are now pending in all parts of the United States.

II. This decision by the Circuit Court of Appeals for the Second Circuit we believe to be in conflict with decisions of other Federal Courts, in cases involving the applicability and the constitutionality of this Act:

1) *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, (C. C. A. 5, decided June 15, 1936 as yet

unreported) in which the court held 1) that the Board had no jurisdiction over a labor dispute between employers and employees touching the discharge of laborers in a steel plant who were engaged only in manufacture, and 2) that the effect on interstate commerce of such a dispute was not sufficiently direct to bring it within the regulatory power of the Federal Government, although the employer imported part of his raw materials and exported a large part of his product in interstate commerce.

2) *Fruehauf Trailer Co.* v. *National Labor Relations Board* (C. C. A. 6, decided June 30, 1936 as yet unreported) in which a similar result was reached with regard to a labor dispute affecting laborers engaged in the production and manufacture of trailers, although raw materials were shipped in and the finished product shipped out of the state in which manufacture took place.

3) *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co. Inc.* (C. C. A. 2nd, decided July 13, as yet unreported) in which the court held that, though practically all respondents raw materials were brought in from other states and 83% of his manufactured product was shipped in interstate commerce, yet the Federal Government could not regulate the dealings of employer with employee engaged in the manufacture of the product.

4) *Stout et al.* v. *Pratt, et al.* (D. Mo. 1936) 12 F. Supp. 864. A Missouri mill sought injunctive relief against prosecution under this Act by the Labor Relations Board. The mill received wheat from Kansas and shipped flour to Iowa. The court in denying defendants motion to dismiss the bill and in granting plaintiffs a temporary injunction held that the relation of employer and employee whether in mill, mine, factory or store did not so directly affect interstate commerce as to permit Federal regulation of the relationship.

5) *Bendix Products Corp.* v. *Beman et al.* 14 F. Supp. 58 (N. D. Ill. 1936). Plaintiff, a manufacturer of carburetors, brakes and other automotive and aircraft parts and accessories, was granted injunctive relief against action by the Labor Board under the Act on the ground that the Act deprived the employer of freedom of contract and consequently was a denial of due process.

6) ***El Paso Electric Co.*** v. ***Elliott et al.*** 15 F. Supp. 81 (W. D. Tex. 1936). The court granted an injunction against the Labor Board's proceeding under the Act on the ground that the Act was unconstitutional as applied to the plaintiff, an electric company producing energy in New Mexico for sale in Texas.

7) *Bethlehem Shipbuilding Corporation Ltd.* v. *Myers et al.* (D. Mass. decided July 22, 1936, as yet unreported). The plaintiff was granted injunctive relief against threatened proceedings under the Act by the defendants on the ground that the Act as applied to the plaintiff was not within the Federal power over commerce.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 466, National Labor Relations Board, Petitioner, against The Associated Press, Respondent, and that said decree of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

Dated: New York, N. Y., September 14, 1936.

THE ASSOCIATED PRESS,
By JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion of the Circuit Court of Appeals for the Second Circuit has not been reported but may be found in the record at pages 436-445.

Jurisdiction.

The decree of the Circuit Court of Appeals for the Second Circuit now sought to be reviewed was entered July 20, 1936 (R. 445).

The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 (a) of the Judicial Code, as amended by the Act of Congress of February 13, 1925, c. 229 s. 1; 43 stat. 938 (U. S. C. A. Title 28, §347(a)).

Statute Involved.

The nature of this case and the decision of the Circuit Court of Appeals is such as to bring same within the terms of the statutory provisions aforesaid, in that the validity of a statute of the United States, to wit, the National Labor Relations Act, Act of Congress July 5, 1935, Pub. No. 198, 74th Congress, 49 Stat. 10, U. S. C. A. Title 29, Section 151 *et seq.*, was assailed as unconstitutional.

Statement.

The principal facts have already been summarized in the petition, *supra*, pages 2 to 4.

Specification of Errors to Be Urged.

1. The Circuit Court of Appeals erred in holding that the National Labor Relations Act is a valid exercise of the power of Congress to regulate interstate commerce.

2. The Circuit Court of Appeals erred in holding that the relationship between The Associated Press as employer and Morris Watson as one of its editorial employees so directly affected interstate commerce as to be subject to Federal regulation.

3. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Fifth Amendment to the Constitution of the United States.

4. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the First Amendment to the Constitution of the United States.

5. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Seventh Amendment to the Constitution of the United States.

6. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Tenth Amendment to the Constitution of the United States.

ARGUMENT.

POINT I.

The relation of employer with employee does not directly affect commerce and is therefore not subject to regulation by Congress.

a) The employer-employee relationship, whether in production, in the current of commerce or on the very instrumentalities of commerce, is a purely local one which does not directly affect interstate commerce and therefore is not susceptible of Federal regulation.

That the relation of employer and employee in industry is not subject to Federal regulation under the Commerce Clause was decided by this Court in *Schechter Corp.* v. *United States*, 295 U. S. 495, with regard to hours and wages, and in *Carter* v. *Carter Coal Co.*, 297 U. S. (80 L. Ed. 749) with regard to hours, wages and collective bargaining.

Nor does the fact that the relationship exists on the very instrumentalities of interstate commerce subject it to Federal regulation.

In *Adair* v. *United States*, 208 U. S. 161, the Court considered the Erdmann Act of 1898 which made it a crime for an interstate carrier to discharge an employee merely because of his membership in a labor organization. Mr. Justice McKenna in his dissent, in language which might well be used to describe the present Labor Relations Act, said (p. 184):

> "The provisions of the act are explicit and present a well coordinated plan for the settlement of disputes between carriers and their employes, by bringing the dis-

> putes to arbitration and accommodation, and thereby prevent strikes and the public disorder and derangement of business that may be consequent upon them."

Yet the Court held (p. 178):

> "But *what possible legal or logical connection is there between an employe's membership in a labor organization and the carrying on of interstate commerce?* Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employe is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of its members as wage-earners—an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such." *

This decision has to the best of our knowledge never been overruled. *Pennsylvania Railroad Co.* v. *Labor Board*, 261 U. S. 72, and *Pennsylvania R. R. System, etc.* v. *Pennsylvania R. R. Co.*, 267 U. S. 203 in no way detract from its authority. Both cases arose under the Transportation Act of 1920. By that Act the only action which could be taken by the Board in case of violation of its decision of a dispute was to make public its decision. In the first case, the Court without passing on the constitutionality of the Act held that it would not enjoin the Board from acting.

In the latter case (267 U. S. 203) a union sought to enjoin the railroad from ignoring the ruling of the Labor Board. In refusing the injunction the Court, after quoting from its decision in the last cited case, said (p. 215):

> "It is clear from this language that in the *Labor Board Case* this Court has decided that there is nothing

* Italics ours unless otherwise noted.

> compulsory in the provisions of the statute as against either the Company or the employees upon the basis of which either acquired additional rights against the other which can be enforced in a court of law."

Obviously the decision of these cases is not authority in support of the present Act which sets up not moral rights and obligations, but legal rights and obligations enforceable not by public opinion but with all the power of the courts.

In *Wilson* v. *New*, 243 U. S. 332, the Court upheld the Adamson Act, which fixed the hours and wages of employees of interstate carriers in the face of a threatened general strike, as a necessary measure to prevent a complete interruption of interstate commerce and as "essential to protect the public right and safeguard the movement of interstate commerce". Thus, the Act was an emergency measure, upheld by reason of extraordinary circumstances under which the employer-employee relations threatened to operate directly upon the very instrumentalities of commerce.

Five years later in *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, the Court explained and distinguished its decision in the *Wilson* case in the following language (p. 544):

> "It is not too much to say that the ruling in *Wilson* v. *New* went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster."

As the Court said in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369:

> "The legislation considered in *Wilson* v. *New* was drafted to meet a particular exigency and its validity depended upon circumstances so unusual that this court's decision respecting it cannot be considered a precedent here."

Nor does *Texas & New Orleans Railroad Company et al.* v. *Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548, in any way overrule the decision in the *Adair* case. The *Texas* case arose under the Railroad Labor Act of 1926. By that Act it was provided that representatives for the purpose of arbitration were to be selected by the respective parties "without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other". It appears that the railroad opposed the demands of a regularly organized union, promoted another organization which would be more favorable to it and discharged leading representatives of the original organization. The union sought to enjoin the railroad from interfering with their employees with respect to their right to select representatives. The decision of the lower courts granting the injunction was upheld. The Court held that the Act did not compel the carrier to deal with the union, or to employ union members, and that the only compulsion put upon the carriers by the Act was to refrain from interfering with the designation of representatives by the employees. The *Adair* case was distinguished on the ground that (p. 571):

> "The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees *or to discharge them*. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

True, despite the specific statement of the Court contained in the above quotation, that the Act in no way interfered with the right of the carrier to discharge its employees, the decree which was affirmed required the reinstatement of the discharged union men. But that requirement was inserted not because the Court felt that the carrier had acted illegally in discharging these men, but as a means of purging the road of the contempt of which it was guilty in disobeying the District Court's injunction.

The present Act goes far beyond that of 1926 which was considered in the above case. In that Act the Court specifically noted that resort to arbitration with the duly elected representatives of labor was not required, nor, as has been indicated, was the employer denied the right to discharge an employee, even though the reason for the discharge might be, that the employee was actively engaged in organizing his fellows.

POINT II.

The work done by Watson and by the petitioner's other editorial employees was not in interstate commerce or in a "throat" of such commerce.

Even if the Court had held that Congress could deny to employers on interstate railroads the right to hire and fire, such a decision would not be authority for the imposition of a like denial upon the petitioner. As already indicated the Associated Press is not an instrumentality of interstate commerce; its only contact with commerce between the states is that it receives news and sends it out over the wires of the regular communications companies to its members.

The Board contended (R. 13) and the Circuit Court held, (R. 443-4) that the work done by the editorial employees of the petitioner was in a "throat" of interstate commerce, and that therefore the petitioner's relations with those employees was subject to Federal regulation.

Whether or not The Associated Press, as a whole, may be said to be engaged in interstate commerce, the record establishes beyond question that the editorial employees whose relations are here involved are engaged only in that part of the business of The Associated Press which is intrastate in character and analogous to local manufacturing or processing.

The nature and extent of this editorial work, outside of any stream of commerce, is abundantly and repeatedly shown in the record (R. 32-34, 66-67, 69, 93-95, 101-102, 117-118, 119-124, 186, 191, 214, 225, 421-423). Aside from the collection of news, by going out on "stories" or "assignments", the editorial employees are engaged in examining incoming news, rewriting it, selecting and discarding, balancing it to make up proportioned news reports according to the special needs of the respective localities and newspapers to which the reports are to be sent. We submit that it is unjustifiable to characterise such work as a mere rerouting of incoming news into outgoing channels. There is a distinct break at the New York office in the continuity of the flow of news.

This Court has held that the mere fact that the material manufactured or processed has been shipped in from another state and is going to be shipped out to a third state does not necessarily convert the business of manufacturing or processing into interstate commerce. *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134.

We contend that the activities of the editorial employees of The Associated Press are in no wise different from those

performed by employees engaged in the manufacture from materials procured from other states of articles which in their finished form are to be shipped out of the state of manufacture (see *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co. Inc. (supra)* and *National Labor Relations Board* v. *Jones & Laughlin Steel Co. (supra)*).

POINT III.

The National Labor Relations Act violates the Fifth Amendment and is void, because it does not seek legitimate ends, and its terms are arbitrary, unreasonable and capricious.

Section 1 of the Act states that its purpose is "to diminish the causes of labor disputes." This is to be done "by restoring equality of bargaining power between employer and employees." To this end the Act provides (Section 9) that an employer may deal *only* with those representatives "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." The Board is to decide what constitutes an appropriate unit. Likewise an employer may not (Section 8(3)) discharge an employee or discriminate in regard to hire or tenure of employment of an employee, if the Board considers that the discharge or the discrimination was caused by a desire to encourage or discourage membership in any labor organization. It was under this last section that these proceedings against the petitioner herein were instituted.

Freedom of contract between employer and employee, the right to private bargaining, is the rule under the Fifth Amendment and restraint the exception.

As this Court said in *Morehead* v. *Tipaldo*, 297 U. S. (decided June 1, 1936):

> *"The right to make contracts about one's affairs is a part of the liberty protected by the due process clause.* Within this liberty are provisions of contracts between employer and employee fixing the wages to be paid. In making contracts of employment, generally speaking, *the parties have equal right to obtain from each other the best terms they can by private bargaining.* Legislative abridgement of that freedom can only be justified by the existence of *exceptional circumstances. Freedom of contract is the general rule and restraint the exception."*

To the same effect see:

Adair v. *U. S.*, 208 U. S. 161;
Allgeyer v. *Louisiana*, 165 U. S. 578;
Butchers' Union Slaughter-house Co. v. *Live-stock Co.*, 111 U. S. 746;
Adkins v. *Children's Hospital*, 261 U. S. 525; which was cited and followed in
Murphy v. *Sardell*, 269 U. S. 530;
Coppage v. *Kansas*, 236 U. S. 1;
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522;
Ribnik v. *McBride*, 277 U. S. 350.

The National Labor Relations Act is not confined to the exigencies of any emergency*, to the relief of any extraordinary distress§, to the removal of any unusual danger** or fraudulent or unfair practice†, it is intended as a permanent piece of legislation and must be judged as such.

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* Compare *Wilson* v. *New*, *supra*; *Block* v. *Hirsh*, 256 U. S. 135 and similar cases.

§ *Nebbia* v. *New York*, 291 U. S. 502; *Bunting* v. *Oregon*, 243 U. S. 426; *Muller* v. *Oregon*, 208 U. S. 412.

** *Holden* v. *Hardy*, 169 U. S. 366.

† *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *McLean* v. *Arkansas*, 211 U. S. 539; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Peterson Baking Co.* v. *Bryan*, 290 U. S. 570; *Armour & Co.* v. *North Dakota*, 240 U. S. 510; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, and similar cases.

It is an attempt utterly to destroy the freedom of individual employers and employees to bargain with each other *equally and individually* in regard to their own private relations and private occupations. Such a wholesale restraint on freedom of contract is without legal precedent and not permissible under the due process clause of the Fifth Amendment.

Assuming for the sake of argument, however, that the Act seeks legitimate ends, the means adopted are arbitrary and unreasonable.

The Act usurps and interferes with the management of the employer's own property and business by dictating to him how he shall deal with his workers, and by putting it within the power of the Labor Board to require him to employ those whom he may not want or trust or whom he may consider incompetent.

The Act requires that the representatives of the majority of the employees in an "appropriate unit" shall be the *exclusive* representatives of all the employees. Thus the minority is not only deprived of the power to contract with their employer, but they are also in effect bound by the terms of any agreement which he makes with the representatives of the majority.

As to the unreasonableness of such a requirement this Court said in *Carter* v. *Carter Coal Company, supra:*

> "The power (to fix hours and wages) conferred upon the majority (of producers and of miners) is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.
>
> * * * * * * * * *

> "And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question. Schechter Corp. v. United States, 295 U. S. at p. 537; Eubank v. Richmond, 226 U. S. 137, 143; Seattle Trust Co. v. Roberge, 278 U. S. 116, 121-122."

But this Act goes even beyond the Guffey Coal Act in that it does not set out what employees shall be included in determining the unit to be polled. The decision is left to the Board as to what unit is the appropriate one for collective bargaining. The only restriction upon the power of the Board in the selection of a unit is that such selection be made "in order to insure to employees the full benefit of their right to self-organisation and to collective bargaining and otherwise to effectuate the policies of this Act".

As the court said in considering this Act in *Bendix Products Corporation* v. *L. W. Beman* (N. D. Ill. 1936), 14 F. Supp. 58, 66;

> "Implicit in the power to determine the unit appropriate for the purposes of collective bargining is the power to gerrymander, and thereby to aggrandize or crush a labor organisation."

POINT IV.

The National Labor Relations Act contravenes the First Amendment.

The First Amendment guarantees to citizens of the United States freedom of speech and freedom of the press. This freedom is seriously jeopardised by the provisions of the Labor Relations Act. As has already been indicated

Labor Relations Board may in certain circumstances require an employer to reinstate an employee. The Associated Press claims the right to discharge any employee, whenever it feels that his viewpoint has become so colored that he is unable to write the unbiased type of news article with which it attempts to provide its members. If the validity of the Act is upheld the Board will be able to force The Associated Press to employ men, even though it feels such men cannot write accurate and impartial reports; and The Associated Press, if it is to continue in business, will have to send these reports out as its own. Its freedom to present the news it wants to as it wants to will be seriously hampered if not destroyed.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the novel and important questions of Federal law present in this cause may be decided by this Court, and that to such an end a writ of certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals for the Second Circuit and finally reverse it.

JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.

In the

Supreme Court of the United States

October Term, 1936

No. 365

THE ASSOCIATED PRESS,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

BRIEF ON BEHALF OF PETITIONER, THE ASSOCIATED PRESS

John W. Davis,
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INDEX

PAGE

PRELIMINARY.

Opinion Below 1

Jurisdiction 1

Questions Presented 2

Statute Involved 2

STATEMENT OF THE CASE 5

The Nature of the Business of The Associated Press 9

Nature of the Work of the Editorial Employees in the New York City Office 11

Decision Below 12

Specifications of Error 16

Summary of Argument 17

POINT I —*The Act is void in its entirety as an unrestricted attempt to regulate the relationship between all industrial employers and employees, by imposing "collective bargaining" upon them, in violation of the Tenth Amendment* 18

1. The Act is not a regulation only of those activities or relations of persons engaged in interstate or foreign commerce which directly affect such commerce, but is essentially an attempt by Congress, unlimited in scope, to impose "collective bargaining" on all industry 19

PAGE

A. That the fundamental purpose of the Act is to impose collective bargaining on all industry, no matter how local, appears in the preamble (Section 1) 20

B. This sweeping purpose is even more clearly shown by the very provisions and definitions in the Act 24

C. The legislative history of the Act leaves no possible doubt as to the essentially universal purpose of the Act 29

2. In this respect the Act is inseverable. Its scope cannot be limited by construction or by the separability clause (Section 15) 32

3. The entire Act, being essentially a regulation of the employer-employee relationship in all industry, local or nationwide, is a patent violation of the Tenth Amendment 34

POINT II —*The relation between The Associated Press and its editorial employees is not interstate commerce, does not affect such commerce, and is not subject to Federal control* 37

1. The power of Congress is strictly confined to the regulation of interstate commerce and those matters by which it is directly affected 37

PAGE

2. An interruption in the process of production or manufacture (or in the case at bar, the procurement of news), although it may lessen the supply of goods available for commerce, is not *per se* an obstruction to commerce nor does it directly affect it 38

3. The AP is in no sense an instrumentality of interstate commerce. Its editorial employees, including the complainant Morris Watson, are not engaged in interstate or foreign commerce 42

4. The so-called "throat, current or flow" cases, the transportation and the "strike" or anti-trust cases, lend no support to the claim that disputes between employer and employee in general industry, *per se* directly affect, burden or obstruct interstate commerce 47

A. The "throat", "current" or "flow" of commerce cases 47

B. The railroad cases 50

C. The "strike" or anti-trust cases 62

POINT III—*The Act violates the Fifth Amendment and is void because its terms are arbitrary, unreasonable and capricious, having no real and substantial relation to the accomplishment of legitimate ends* 64

PAGE

1. The enforcement by statutory compulsion of the collective action which the Act prescribes is an arbitrary encroachment upon the constitutional rights of the unwilling employer and his non-consenting employees 68

   A. Exceptional circumstances being absent, the statutory compulsion is arbitrary *per se* 68

   B. The particular collective action which the Act seeks to impose is arbitrary, unreasonable and unduly restrictive of constitutional rights 77

      (a) The Closed Union Shop 78
      (b) Outlawing the Company Union 79
      (c) The Preferred Status of Union employees 80
      (d) Express Sanction of Discriminatory Closed Union Shop Agreements 81
      (e) The Arbitrary Restrictions upon Collective Bargaining Units and Representatives 82
      (f) Compulsory Unilateral Bargaining 86
      (g) Recapitulation 88

2. The methods of enforcement which the Act adopts are themselves arbitrary and unreasonably intrusive 89

   A. The intrusive and unlimited power conferred upon the Board 89

PAGE

B. The power to compel employers to reinstate discharged employees with back pay violates the Seventh Amendment as well as the Fifth Amendment to the Constitution 93

POINT IV —*The Act, in its application to The Associated Press, violates the First Amendment to the Constitution which guarantees to citizens freedom of speech and freedom of the press* 96

CONCLUSION 102

APPENDIX A

TABLE OF CASES CITED

Adair v. United States, 208 U. S. 161 ..... 52, 58, 60, 68, 70, 72, 75, 76, 80, 93

Adams v. Tanner, 244 U. S. 590 92

Adkins v. Children's Hospital, 261 U. S. 525 68

Alexander v. Cosden Pipe Line Co., 290 U. S. 484 26

Allgeyer v. Louisiana, 165 U. S. 578 68

Am. Tob. Co. v. Werckmeister, 207 U. S. 284 24

Anderson v. United States, 171 U. S. 604 44

Arkadelphia Co. v. St. Louis S. W. Ry., 249 U. S. 134 35

Armour & Co. v. North Dakota, 240 U. S. 510 ... 69

Baldwin v. Franks, 120 U. S. 678 32

Baltimore & Ohio Railroad v. Interstate Commerce Commission, 221 U. S. 612 51

	Page
Beard v. Rowan, 9 Pet. 301	20
Bedford Cut Stone Co. v. Stone Cutters Ass'n., 274 U. S. 37	63
Bendix Products Corp. v. Beman, 14 F. Supp. 58	83, 88
Bernier v. Bernier, 147 U. S. 242	24
Block v. Hirsh, 256 U. S. 135	68
Blumenstock Brothers v. Curtis Publishing Company, 252 U. S. 436	43
Bunting v. Oregon, 243 U. S. 426	69
Butchers' Union Co. v. Crescent City Co., 111 U. S. 746	68
Butts v. Merchants Transportation Co., 230 U. S. 126	32
Caminetti v. United States, 242 U. S. 470	19
Carter v. Carter Coal Company, 298 U. S. 238	32, 34, 35, 36, 38, 40, 42, 43, 49, 84
Champlin Refining Co. v. Commission, 286 U. S. 210	35
Chassaniol v. City of Greenwood, 291 U. S. 584	35
Chicago Board of Trade v. Olsen, 262 U. S. 1	47
Chicago, Burlington & Quincy Railway v. Drainage Commissioners, 200 U. S. 561	64
Chicago, Burlington and Quincy Railroad Company v. McGuire, 219 U. S. 549	69
Child Labor Tax Case, 259 U. S. 20	36
Coe v. Errol, 116 U. S. 517	35
Coosaw Mining Co. v. So. Carolina, 144 U. S. 550	20
Coppage v. Kansas, 236 U. S. 1	60, 68, 72, 75, 80, 93

	PAGE
Coronado Coal Co. v. United Mine Workers, 268 U. S. 295	35, 63
Costanzo v. Tillinghast, 287 U. S. 341	26
Crescent Oil Co. v. Mississippi, 257 U. S. 129	35
Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282	48
Debs, In re, 158 U. S. 564	50, 57, 63
DeJonge v. State of Oregon, U. S. (decided January 4, 1937	101
Delaware, Lackawanna & Western RR Co. v. Yurkonis, 238 U. S. 439	35
Duplex Printing Press Co. v. Deering, 254 U. S. 443	29, 63
Engel v. O'Malley, 219 U. S. 128	43
Fairport P. & E. R. Co. v. Meredith, 292 U. S. 589	19
Fasulo v. United States, 272 U. S. 620	24
Federal Base Ball Club v. National League, 259 U. S. 200	43
Federal Trade Commission v. Western Meat Co., 272 U. S. 554	24
First Employers' Liability Cases, 207 U. S. 463	32, 38, 45, 46, 51
First National Bank of Wellington v. Chapman, 173 U. S. 205	24
Foster Bros. Mfg. Co. v. National Labor Relations Board (C. C. A. 4th 1936) 85 F. (2) 984	35
Fruehauf Trailer Co. v. National Labor Relations Board (C. C. A. 6th 1936) 85 F. (2) 391	35
General Oil Company v. Crain, 209 U. S. 211	35

	Page
German Alliance Insurance Co. v. Kansas, 233 U. S. 389	69
Gibbons v. Ogden, 9 Wheat 1	84
Gilman v. Philadelphia, 3 Wall. 713	51
Ginsberg & Sons, D. v. Popkin, 285 U. S. 204	26
Gitlow v. New York, 268 U. S. 652	100
Goodlett v. Louisville & N. R. Co., 122 U. S. 391	19
Grau v. United States, 287 U. S. 124	24
Grosjean v. American Press Co. Inc., 297 U. S. 233	101
Hall v. Geiger-Jones Co., 242 U. S. 539	69
Hamilton v. Rathbone, 175 U. S. 414	24
Hammer v. Dagenhart, 247 U. S. 251	35, 36, 38
Hannibal Bridge Co. v. United States, 221 U. S. 194	51
Hart v. B. F. Keith Vaudeville Exchange, 12 F. (2d) 341 (C. C. A. 2nd, 1926) cert. den. 273 U. S. 703	43
Heisler v. Thomas Colliery Co., 260 U. S. 245	35
Helvering v. Morgan's, 293 U. S. 121	26
Hemphill v. Orloff, 277 U. S. 537	43
Highland v. Russell Car & Snow Plow Co., 279 U. S. 253	68
Hill v. Wallace, 259 U. S. 44	32
Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229	67, 68, 73, 75, 77
Holden v. Hardy, 169 U. S. 366	69
Hopkins v. United States, 171 U. S. 578	44
Illinois Central R. R. v. McKendree, 203 U. S. 514	32

PAGE

Indiana Farmer's Guide Publishing Co. v. Prairie Farmer Publishing Co., 293 U. S. 268 45
Industrial Association v. United States, 268 U. S. 64 63
International News Service v. Associated Press, 248 U. S. 215 44
International Textbook Company v. Pigg, 217 U. S. 91 45

Jacobson v. Massachusetts, 197 U. S. 11 34
James v. Bowman, 190 U. S. 127 32
Johnson v. Southern Pacific Co., 196 U. S. 1 51

Kidd v. Pearson, 128 U. S. 1 35
Knoxville Iron Co. v. Harbison, 183 U. S. 13 69

Lehner v. Associated Press, 215 Wis. 254, 254 N. W. 664 44
Lemke v. Farmers Grain Company, 258 U. S. 50.. 48
Levering & Garrigues Co. v. Morrin, 289 U. S. 103 63
Linder v. United States, 268 U. S. 5 36
Louisville Bridge Co. v. United States, 242 U. S. 409 51

McCulloch v. Maryland, 4 Wheat. 316 35
McLean v. Arkansas, 211 U. S. 539 69
Missouri, Kansas & Texas Railway Co. v. United States, 231 U. S. 112 51
Mondou v. N. Y., N. H. & H. R. Co., 223 U. S. 1.. 54
Monongahela Bridge Co. v. United States, 216 U. S. 177 51
Morehead v. New York ex rel Tipaldo, 298 U. S. 587 ..... 64, 68

	Page
Muller v. Oregon, 208 U. S. 412	69
Munn v. Illinois, 94 U. S. 113	69
Nathan v. Louisiana, 8 How. 73	43
National Labor Relations Board v. Associated Press, 85 F. (2) 56	1
National Labor Relations Board v. Friedman-Harry Marx Clothing Co., Inc. (C. C. A. 2d 1936) 85 F. (2) 1	35
National Labor Relations Board v. Jones & Laughlin Steel Corp. (C. C. A. 5th June 15, 1936) 83 F. (2) 998	35
National Labor Relations Board v. Mackay Radio and Telegraph Company (C. C. A. 9th, decided January 11, 1937)	94, 95
Near v. Minnesota, 283 U. S. 697	100
Nebbia v. New York, 291 U. S. 502	64, 65, 69
New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495	43
Norman v. Baltimore & Ohio R. Co., 294 U. S. 240	64
O'Gorman & Young v. Hartford Insurance Co., 282 U. S. 251	69
Old Dearborn Distributing Co. v. Seagram-Distillers Corporation, U. S. (decided December 7, 1936)	69
Oliver Iron Co. v. Lord, 262 U. S. 172	35
Patterson v. Bark Eudora, 190 U. S. 169	19, 69
Paul v. Virginia, 8 Wall. 168	43
Pennsylvania v. Wheeling Bridge Co., 13 How. 518	51
Pennsylvania Railroad Company v. Labor Board, 261 U. S. 72	58

	Page
Pennsylvania R. R. System, etc. v. Pennsylvania R. R. Co., 267 U. S. 203	58
Pep Boys, Manny, Moe & Jack of California v. Pyroil Sales Company, Inc. U. S. (decided December 7, 1936)	69
Petersen Baking Co. v. Bryan, 290 U. S. 570	69
Piedmont & N. R. Co. v. I. C. C., 286 U. S. 299	24
Pipe Line Cases, The, 234 U. S. 548	44
Platt v. Union Pacific R. Co., 99 U. S. 48	24
Pratt v. Stout (C. C. A. 8th 1936) 85 F. (2) 172	35
Price v. Forrest, 173 U. S. 410	20
Railroad Commission of Wisconsin v. Chicago B. & Q. R. R. Co., 257 U. S. 563	29
Railroad Retirement Board v. Alton Railroad Co., 295 U. S. 330	32, 36, 38, 45, 50, 55, 60, 64
Rhodes v. Iowa, 170 U. S. 412	24
Robertson v. Baldwin, 165 U. S. 275	69
Rosenthal-Ettlinger Co., H. B. v. Schlossberg, 266 N. Y. Supp. 762	80
Royal Indemnity Co. v. Am. Bond & Mort. Co., 289 U. S. 165	24
St. Louis, Iron Mountain Ry. v. Taylor, 210 U. S. 281	51
St. Louis & O'Fallon R. Co. v. United States, 279 U. S. 461	24
Schechter Poultry Corporation v. United States, 295 U. S. 495	21, 29, 30, 31, 33, 35, 36, 38, 40, 63

	PAGE
Schlemmer v. Buffalo, Rochester and Pittsburgh Railway Company, 205 U. S. 1	51
Schmidinger v. Chicago, 226 U. S. 578	69
Second Employers' Liability Cases, 223 U. S. 1	54
Southern Railway Co. v. United States, 222 U. S. 20	51
Southwestern Bell Tel. Co. v. Public Service Commission, 262 U. S. 276	92
Stafford v. Wallace, 258 U. S. 495	47
Strathearn S. S. Co. v. Dillon, 252 U. S. 348	19
Stromberg v. California, 283 U. S. 359	100
Swift & Co. v. United States, 196 U. S. 375	47
Tagg Bros. & Moorhead v. United States, 280 U. S. 420	47, 48, 69
Texas & New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548	26, 47, 56, 59, 60, 69, 93
Trade-Mark Cases, 100 U. S. 82	32
Truax v. Corrigan, 257 U. S. 312	92
Tyson & Bro. v. Banton, 273 U. S. 418	92
Union Bridge Co. v. United States, 204 U. S. 364	51
United Leather Workers v. Herkert, 265 U. S. 457	40, 63
United Mine Workers v. Coronado Coal Co., 259 U. S. 344	35, 39, 40, 63
United States v. Butler, 297 U. S. 1	34, 36
United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, 282 U. S. 311	45
United States v. Constantine, 296 U. S. 287	36
United States v. Harris, 106 U. S. 629	32

	PAGE
United States v. E. C. Knight Co., 156 U. S. 1 ...	35
U. S. v. Murdock, 290 U. S. 389	26
United States v. Reese, 92 U. S. 214	32
United States v. Shreveport Grain & Elevator Company, 287 U. S. 77	29
United States Fidelity and Guaranty Company v. Kentucky, 231 U. S. 394	43
Utah Power & Light Co. v. Pfost, 286 U. S. 165..	35, 46
Van Camp & Sons v. American Can Co., 278 U. S. 245	29
Virginia Ry. Co. v. System Federation No. 40, 84 F. (2d) 641 (C. C. A. 4th, 1936)	86
Ware and Leland v. Mobile County, 209 U. S. 405	43
Warner v. Goltra, 293 U. S. 155	24
Western Union Telegraph Co. v. Kansas, 216 U. S. 1	45
Whitney v. California, 274 U. S. 357	100
Williams v. Standard Oil Co., 278 U. S. 235....	32
Willson v. Black Bird Creek Marsh Co., 2 Pet. 245	51
Wilson v. New, 243 U. S. 332	54, 68, 69, 92
Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522	55, 68, 73, 74, 75, 88, 92
Wolff Packing Co. v. Court of Industrial Relations, 267 U. S. 552	73, 75, 88
Wood v. United States, 16 Pet. 342	24
Yazoo & Mississippi R. Co. v. Thomas, 132 U. S. 174	20
Yu Cong Eng v. Trinidad, 271 U. S. 500	32

CONSTITUTION OF THE UNITED STATES

PAGE

Commerce Power 2, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 45, 48, 50, 51, 52, 54, 56, 59, 61, 62, 63, 64, 98, 99,

First Amendment 16, 17, 96, 99, 100, 102

Fifth Amendment 15, 17, 63, 64, 70, 93, 99

Seventh Amendment 16, 17, 93, 95

Tenth Amendment 17, 18, 34

Fourteenth Amendment 64

STATUTES

National Labor Relations Act 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 41, 47, 48, 56, 61, 64, 65, 66, 67, 68, 70, 75, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 92, 93, 94, 96, 99, 100, 102
[See Appendix A.]

Section 1 (preamble) 20, 21, 22, 23, 26, 27, 28, 30, 32, 41, 61, 75, 76

Section 2 ..... 6, 24
Section 2(2) 25, 33
Section 2(3) 25
Section 2(6) 3, 6, 25
Section 2(7) 3, 6, 26, 27, 28, 30
Section 2(9) 26

PAGE

Section 3 27

Section 4 27

Section 5 27

Section 6 27

Section 7 ..... 3, 5, 27, 33, 65, 70, 75

Section 8 ..... 3, 4, 27, 41, 65, 70, 78, 90
Section 8(1) 3, 5, 6, 14, 65, 78, 81, 89
Section 8(2) 4, 66, 78, 79, 82
Section 8(3) 4, 5, 6, 14, 65, 67, 79, 80, 81, 82, 88, 89
Section 8(4) 4
Section 8(5) 4, 79, 86, 88

Section 9 ..... 27, 78, 81
Section 9(a) 83, 89
Section 9(b) 79, 83, 89
Section 9(c) 6, 7, 27, 86

Section 10 ..... 4, 27
Section 10(a) 27, 90
Section 10(b) 4, 90
Section 10(c) 5, 90, 93, 94
Section 10(e) 5, 8, 14, 90

Section 11 ..... 27, 90

Section 12 27

Section 13 ..... 23, 27, 29, 82

Section 14 27

Section 15 ..... 27, 32

Section 16 27

Adamson Act of September 1916 (39 Stat. 721) 55, 58

PAGE

Clayton Act, Section 6 (38 Stat. 731) 34

Employers' Liability Act of June 11, 1906 (34 Stat. 232) 51, 52

Employers' Liability Act of April 5, 1910 (36 Stat. 291) .. 54

Erdman Act of June 1, 1898 (30 Stat. 424) ... 52, 53, 58, 76

Section 10 ..... 52, 58

Guffey Coal Conservation Act (49 Stat. 991, 1001) ... 76, 85

Judicial Code, Section 240(a) (43 Stat. 938) 1

Labor Disputes Act of 1898 (30 Stat. 424) 52, 53, 58, 76

National Industrial Recovery Act (48 Stat. 195) 3, 30, 33, 76

Section 7(a) 3, 30, 33

Newlands Act of 1913 (38 Stat. 103) 58

Norris-LaGuardia Anti-Injunction Act (47 Stat. 70) 76

Railroad Labor Disputes Act of October 1, 1888 (25 Stat. 501) 57, 58

Railway Labor Act of May 20, 1926 (44 Stat. 577) 59, 60, 62, 76

Section 2, subd. 3 59

Railway Labor Act, Amendments of 1934 (48 Stat. 1186) 33, 75, 76

Transportation Act of 1920, Title III (48 Stat. 456, 469) 58

BOARD DECISIONS

In the Matter of The Associated Press and American Newspaper Guild, Case No. R-26, Decision No. 58 .. 7, 86

In re Alaska Juneau Co., Case No. 91, Dec. 94 87

In re Canton Enameling & Stamping Co., Case No. 47, Dec. 31 87

In re Consumers' Research, Inc., Case No. 52, Dec. 85 87

PAGE

In re Edward E. Cox, Printer, Case No. 37, Dec. 45 87

In re International Filter Co., Case No. 56 and R. 21, Dec. 40 87

In re Jeffrey-Dewitt Insulator Co., Case No. 21, Dec. 50 .. 87

In re Sands Mfg. Co., Case No. 33, Dec. 46 87

In re Timken Silent Automatic Co., Case No. 10, Dec. 25 87

LEGISLATIVE RECORDS

Report of the Senate Committee on Education and Labor on S. 1958, Report No. 573, 74th Cong. 1st Sess., May 1, 1935 ..... 2, 21, 25, 29, 31

Report of the House Committee on Labor on S. 1958, Report No. 972, 74th Cong. 1st Sess., May 21, 1935 ..... 2, 29

Report of the House Committee on Labor on S. 1958, Report No. 1147, 74th Cong. 1st Sess., June 10, 1935 ..... 2, 21, 25, 29, 30, 34

OTHER AUTHORITIES

Commerce Clearing House, Labor Law Service, pp. 15,401, *et seq.*, paragraphs 15,401, *et seq.* 28, 87

"Governmental Protection of Labor's Right to Organize", National Labor Relations Board, Division of Economic Research, Bulletin No. 1 .....24, 57, 61, 75, 76

Prentice-Hall Labor and Unemployment Insurance Service, paragraphs 14,601, *et seq.* 87

University of Chicago Law Review, Vol. 4, p. 97 85

IN THE

Supreme Court of the United States

October Term, 1936

THE ASSOCIATED PRESS, Petitioner, *v.* NATIONAL LABOR RELATIONS BOARD, Respondent.	No. 365

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF ON BEHALF OF THE ASSOCIATED PRESS

Opinion Below

National Labor Relations Board v. *Associated Press*, 85 F. (2) 56 (R. 436-445).

Jurisdiction

Certiorari was granted on October 26, 1936, under Judicial Code Section 240(a), as amended by the Act of February 13, 1925 (c. 229 S. 1, 43 Stat. 938; 28 U. S. C. A. Section 347(a)).

Questions Presented

The question presented is the constitutionality of the National Labor Relations Act of July 5, 1935 (Pub. No. 198, 74th Congress; 49 Stat. 449; 29 U. S. C. A. Section 151).

The case comes down to this. An editorial worker in a New York office is discharged, the reason given by the officer responsible being that his work is not up to his proven capability (R. 251). Enter the National Labor Relations Board; and after hearing the aggrieved employee, they conclude that those whose duty it was to criticize his work were disingenuous about it and that the discharge was in fact provoked by his union activities in connection with the American Newspaper Guild—in which, be it noted, he had been openly engaged without disturbance for over two years (R. 249, 194-199). They make an order compelling his reemployment in his former position with pay during his absence; which the Circuit Court of Appeals, upon the petition of the Board, grants an order to enforce.

In what possible connotation of the term can this be called a regulation of commerce between the States? From what hidden source can the Federal Government derive the power to compel a private employer to retain an employee in his local office whose services he no longer desires?

Statute Involved

The statute involved, the National Labor Relations Act, is set forth in full in Appendix A, *infra*.

The avowed purpose of the Act* is that of reenacting, elaborating, clarifying, and, if possible, more effectively enforcing, the principle of "collective bargaining" and freedom

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*See House Committee Report No. 1147, 74th Cong. 1st Sess. (June 10, 1935) on S. 1958; House Committee Report No. 972, 74th Cong. 1st Sess. (May 11, 1935) on S. 1958; Senate Committee Report No. 573, 74th Cong. 1st Sess. (May 1, 1935) on S. 1958.

of organization of employees, which was first universally proclaimed and sought to be enforced in Section 7(a) of the National Industrial Recovery Act of June 16, 1933 (c. 90, 48 Stat. 195, 198; 15 U. S. C. 707(a)). In substance the Act seeks (1) to guarantee to all employees (with few exceptions) the right to bargain collectively in respect of hours, wages and conditions of employment and (2) to prevent employers from interfering in any way with the exercise of this right, in so far, at least, as such interference is one "affecting commerce" within the meaning of Section 2(7) of the Act. This section defines "affecting commerce" as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led *or tending to lead to a labor dispute** burdening or obstructing commerce or the free flow of commerce." "Commerce" means, of course, interstate or foreign commerce (Section 2 (6)).

Section 7 declares that:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Not content, however, with this general declaration** Section 8 of the Act expressly provides that:

> "It shall be an unfair labor practice for an *employer*"—
>
> (1) "To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7."

---

* Italics ours unless otherwise noted.

** Almost identical with the declaration required by Section 7(a) of the N.I.R.A. to be contained in all codes promulgated pursuant to the N.I.R.A.

(2) "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *."

(3) "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That *nothing* in this Act, * * * [or in other statutes] shall preclude an employer from making an agreement with *a labor organization* (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) *to require as a condition of employment membership therein,* if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made."

(4) "To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act."

(5) "To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)."

For the purpose of preventing employers from engaging in any of the "unfair labor practices" (as described in this Section 8) "affecting commerce", the Board created by the Act is, by Section 10, given the exclusive power to investigate charges that "any person has engaged in or is engaging in any such unfair labor practice, * * * to issue and cause to be served upon such person a complaint stating the charges in that respect" (Section 10(b)), and, after notice and hearing, to "issue and cause to be served on such person an order requir-

ing such person to cease and desist from such unfair labor practice, and *to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.* Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order." (Section 10(c)). The Board is given the power to petition the proper Circuit Court of Appeals "for the enforcement of such order" and "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." (Section 10(e)).

Statement of the Case

On October 18, 1935, The Associated Press (frequently referred to herein as the AP) discharged one Morris Watson, an editorial employee in its New York office, engaged exclusively in obtaining, composing, writing and editing various items of news (R. 186). The reason given Watson for his discharge, *according to his own testimony before the Board,* was "because we are dissatisfied with your work, you are dissatisfied with us, and I am convinced that you will be happier elsewhere" (R. 234), and, as the files of The Associated Press show, Mr. Kent Cooper, the General Manager, authorized Watson's discharge "but *solely* on grounds of his work not being on a basis for which he has shown capability" (R. 251).

On November 7, 1935, the American Newspaper Guild, a labor organization, filed charges with the National Labor Relations Board against The Associated Press, alleging that in discharging Watson the AP had violated the rights of employees guaranteed in Section 7 of the National Labor Relations Act, and had engaged in unfair labor practices in contravention of Section 8, subdivisions (1) and (3) of said

Act (R. 10-11). Thereupon, on December 4, 1935, a complaint was served by the Board on the AP alleging that in discharging and refusing to reinstate said Watson, the AP had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act (R. 12-15). The Associated Press by answer admitted the discharge of Watson but denied that the discharge was due to the fact that Watson had joined or assisted the Guild or had otherwise engaged in union activities, and further denied, on constitutional grounds, that the Act was valid or that the Board had any jurisdiction in the premises (R. 16-21).

Hearings on the complaint were held (in conjunction with a related proceeding*) before a Trial Examiner designated by the Board (R. 49, 417). The AP moved to dismiss the complaint on constitutional grounds. Its motion was denied and it withdrew (R. 29, 48-54, 417-418). After further proceedings in which The Associated Press did not participate except to offer the Board the services of its Assistant General Manager as a witness on the question of the nature of the AP, its business and its relation, if any, to interstate commerce (R. 29, 54, 180, 182, 437), the Trial Examiner recommended that The Associated Press be compelled (1) to reinstate Watson and pay his lost wages and (2) to "cease and desist from refusing to bargain collectively with the American Newspaper Guild", to "bargain collectively with its editorial employees through the American Newspaper Guild and its National Executive Board, duly chosen representa-

* The other proceeding was in accordance with a petition of the American Newspaper Guild (R. 268-269), held pursuant to Section 9(c) of the Act for the purpose of determining whether or not the Guild was, as it claimed to be, the exclusive representative of the editorial employees in the New York office, for the purpose of collective bargaining.

tive of The Associated Press unit of such Guild", and to "file with the Labor Board Director for the Second Region a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements" (R. 44-45).

The Board confirmed the recommendation of the Trial Examiner in part* and ordered The Associated Press to (R. 432-433):

> "1. Cease and desist:
>
> (a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; and
>
> (b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and
>
> (c) From in any other manner interfering with, restraining, or coercing its employees in the exer-

---

* In regard to the Trial Examiner's recommendation as to collective bargaining, the Board stated (R. 418, footnote):

> "Since the complaint did not charge respondent with failure to bargain collectively, we shall make no order with respect thereto."

As a matter of fact, there was no proof that the Guild represented a majority of the AP editorial employees in the New York office. The Board has subsequently found that the Guild is the *exclusive* representative of *all* such editorial employees because a majority of those *who voted* in an election held by the Board under Section 9(c) of the Act (but *not* a majority of *all* the editorial employees in the New York office) chose the Guild as their representative (see Board's Decision No. 58 in Case No. R-26, dated July 3, 1936). It may be safely assumed, therefore, that, whether or not the Board follows the remainder of the Trial Examiner's recommendation and seeks to affirmatively *compel* the AP to bargain collectively with the Guild, depends entirely on the outcome of the case at bar.

cise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Morris Watson immediate and full reinstatement to his former position, without prejudice to any rights and privileges previously enjoyed by him.

(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

(c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting."

Upon the refusal of The Associated Press to comply with this order, the Board petitioned the Circuit Court of Appeals, Second Circuit, for its enforcement pursuant to Section 10(e) of the National Labor Relations Act (R. 1-4).

After a hearing before that Court on June 15, 1936, at which the application of the Act to The Associated Press and its constitutionality were fully argued, the Court granted the petition of the Board in all respects (R. 445).

The Nature of the Business of The Associated Press

The record shows * that The Associated Press is a membership corporation, organized under the laws of the State of New York, and engaged in the collection, compilation, formulation and distribution of intelligence in the form of the important news of the world (R. 56). The AP, however, is distinctly *not a mere conduit for news* (R. 118, 120, 125). This news is collected through its own agents, from its members representing over 1300 morning, evening and Sunday newspapers and by exchange contracts with foreign agencies (R. 56, 57, 63, 71, 87-89). The raw news thus collected is formulated by editing, rewriting, selecting, balancing, or discarding in whole or in part (R. 66-69, 84-89, 93-95, 101-102, 120-122, 140-141); and the formulated news, if it is to be used, is then transmitted to member newspapers and to the foreign agencies in accordance with mutual exchange agreements. The Associated Press is not engaged in the business of selling news (R. 98, 152, 165), is not to make a profit, nor to declare dividends (R. 154-155, Board Ex. 4, Certificate of Incorporation); the cost of its operations is apportioned among

* The AP setup, the nature of its business in general, and the functions of the New York office and all the editorial employees therein, are fully explained in the testimony of Lloyd Stratton, Assistant General Manager, of the AP (R. 54-169). This is, we believe, summarized accurately in the answer to the Board's complaint (R. 16), less accurately in the Intermediate Report of the Trial Examiner (R. 27) and the decision of the Board (R. 416), and still less accurately in the Board's complaint (R. 12). The opinion of the Court below merely purports to summarize the findings of the Board on these questions (R. 438-439).

its members by assessment (R. 80-82, 95-96, 131, 143, 343-345, Board Ex. 4, By-Laws, Art. IX); and its membership is limited to owners of newspapers (R. 96, 154, Board Ex. 4, By-Laws, Art. II). The Associated Press does not own or operate any instrumentalities of interstate commerce, the receipt of raw news, otherwise than by personal delivery, and the transmission of formulated news being conducted by the United States Mails (R. 139) or by the public service companies actually engaged in the communications business (R. 87, 91-92, 96-97).*

It is clear that on these facts The Associated Press is neither an agency nor an instrumentality of interstate commerce. Indeed, neither the Trial Examiner, the Board, nor the Circuit Court of Appeals expressly found that it is. They apparently assumed, however, without finding it to be a fact, that The Associated Press was not materially different from the railroad, radio, telegraph and telephone companies. Manifestly, The Associated Press is not a carrier for hire, is not in any respect a public utility, is not engaged in the transportation or communications business, and does not own, maintain, or operate any agency or instrumentality of interstate or foreign commerce. It is under no legal obligation to render service to anyone except its members, and for no longer time, nor in any other manner, than may be agreed upon between them. And here also there is no finding to the contrary by either the Trial Examiner, the Board or the Court below.

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* The term "leased wires" which often appears in the record is purely a colloquialism, referring to contracts for long term use of the various communication facilities, and does not indicate (outside of teletype machines, etc., which are used in the various local offices) any ownership or other interest in the communication facilities themselves (R. 91-92, 97-98, 125).

Nature of the Work of the Editorial Employees in the New York City Office

The alleged unfair labor practice on the part of The Associated Press in discharging and refusing to reinstate Morris Watson, an editorial employee in its New York City office, relates solely, of course, to that office and to the editorial employees engaged therein (R. 62, 194-195). Although this is the principal office, it is by no means the central office or "throat" through which all of the AP news flows (R. 85-95, 98-100, 120-122, 134, 140-141); it is merely one of the many offices of The Associated Press whose "control of news is extremely decentralized or 'broken down'" (R. 75, 85). Nor does all the news coming into the New York City office necessarily pass on into other states or into other offices; much of it may never leave the office in which it is first originated or received (R. 85, 90, 98, 149).

Moreover, the New York City office is itself divided or broken down into two distinct departments, the Traffic Department and the News Department (R. 82-84, 136-137). All of those employees who are engaged in the actual receipt, transmission or distribution of news are in the Traffic Department (R. 83, 132); all other employees, including Watson and every editorial employee, are grouped in the News Department (R. 136-137, 219).*

The editorial employees in the New York office, therefore, have no connection whatever with the mechanical or physical transmission of news; they are engaged exclusively in its collection or formulation. The nature and extent of this editorial work is abundantly and repeatedly shown in

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* The distinction is well expressed by the witness R. H. Hippelheuser, called by the Board:

> "* * * I would say that an editorial employee in The Associated Press was a person who was engaged in the *production* of news features and photos as differentiated between those people who were engaged in the *dissemination* of news and features and photos." R. 240.

the record. Aside from the collection of news, by actually going out on "stories" or "assignments", the editorial employees are engaged in examining incoming news, rewriting it, selecting and discarding, writing "leads" or titles for it, balancing it to make up proportionate news reports according to the special needs of the respective localities and newspapers to which the reports are to be sent (R. 66-69, 84-89, 93-95, 101-102, 189, 215). Not all of the incoming news is used. It may be "killed" completely, not used at all (R. 101, 117); it may be used solely for local purposes (R. 140-141, 149). It would be wholly inaccurate to characterize such work as a mere rerouting of incoming news into outgoing channels.

The closest contact of any of the editorial employees with the actual transmission of news is that of the so-called "filing editors" who, subject to supervision, determine what news is to go out on particular wires and who hand the typed items of news, after they have been formulated, to members of the Traffic Department for transmission (R. 111, 113, 119, 120). Except for a brief period during which Watson was a filing editor, a period long ante-dating the present charges, he was engaged in editorial work which was always subject to revision by or before it reached the filing editor (R. 186, 191, 213, 218-219, 224-226).

Decision Below

The National Labor Relations Board, in disregard of the foregoing facts, concluded that (R. 423):

> "The operations of the respondent and of its editorial employees occur in the course and current of commerce among the several States and with foreign countries; are an integral part of the operations of the instrumentalities of such commerce; and constitute commerce among the several States and with foreign countries."

The Board, with no less disregard for the record, we submit, went on to find that The Associated Press had discriminated against Morris Watson because of his Guild activities, and that such discrimination tended to lead to labor disputes burdening commerce. The Board said (R. 430-431):

> "We think that it is beyond dispute that Watson was discharged and discriminated against in regard to hire and tenure of employment to discourage membership in the Guild. Respondent did not choose by evidence to rebut the clear implications of the Board's testimony, but chose, rather, to rely on its point that the Board is without jurisdiction in the premises. We find further that by the discharge of Morris Watson respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.
>
> The aforesaid acts of respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. Watson and the other editorial employees of respondent at its New York office in the activities hereinbefore described were directly engaged in interstate and foreign commerce by facilitating and making possible the flow of news from place to place throughout this country and other countries; and any interference with or cessation of such activities would hamper, impede, and interfere with such commerce.
>
> Any cessation of editorial activities at the New York office would cause a break in the flow of foreign news and of some of the important domestic news and, until such break could be repaired or in some manner overcome, would seriously impede, if not prevent, the issuance of newspapers in all parts of the country."

For the foregoing reasons the Board concluded as a matter of law that The Associated Press has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the National Labor Relations Act.

The Circuit Court of Appeals, evidently relying upon the provision in Section 10(e) of the Act that the findings of the Board are conclusive, made no apparent effort of having searched the record in order to determine whether or not such findings were supported by substantial evidence. Having accepted the findings as conclusive, the Court went on to hold that the National Labor Relations Act could be constitutionally applied to The Associated Press and its editorial employees.

The process of reasoning by which the Court reached the conclusion that the Act, as thus applied, is a proper regulation of interstate commerce, is of particular interest. In substance, the Court reasoned as follows:

> (1) "The relation of employer and employee in local industries, not directly affecting interstate commerce, is not subject to federal regulation under the commerce clause"; (R. 440)
>
> (2) "But the federal power to regulate interstate communication which constitutes interstate commerce has been established so far as the instrumentalities of interstate communication are concerned, * * *";
>
> (3) "The business of respondent which merely is a special form or instance of interstate communication is included in the concept of interstate commerce";
>
> (4) "It appears clear that respondent in its business of gathering and distributing news is engaged in interstate commerce"; (R. 441)

(5) "Industrial disputes in an industry or business engaged in interstate commerce may, and frequently do, burden and interrupt the flow of such commerce. Congress recognized this in section 1 of the act";

(6) "A labor dispute affecting the rewriting staff [of the A P] would be a dam to the flow of this news and might or would cut off interstate and foreign receipts and transmission";

(7) "Congress, recognizing this, had power under the commerce clause to enact suitable legislation to deal with practices which have been shown to obstruct or burden interstate commerce"; (R. 442)

(8) "If Congress may, in order to facilitate the amicable settlement of labor disputes, seek to make 'the appropriate collective action' of employees on interstate railroads 'an instrument of peace rather than of strife' it may do so with respect to an interstate system devoted to interstate communication"; (R. 443)

(9) "In the present case, the editing of a message in interstate commerce is not a break in continuity equivalent to manufacturing a finished product from raw materials. Consequently, it is within the federal regulatory power"; (R. 443-444).

The Circuit Court of Appeals then went on to hold that the enforcement of the Act would not deprive The Associated Press of liberty and property without due process of law in violation of the Fifth Amendment, saying (R. 445):

"This Act does not hamper the *legitimate* right of the employer, who may discharge his employees for

> inefficiency or any other cause agreeable to him, provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively. The employer retains full control to bargain with his employees over the wage he shall pay and the working conditions he shall furnish. He remains the master of the operation of his business."

The various fallacies in the Court's reasoning will be pointed out as we proceed. We stop to mention the utter inaccuracy of the analogy sought to be drawn between The Associated Press and railroads which are themselves the "instrumentalities" of commerce.

Furthermore the Court completely overlooked, or else intended the last quoted statement to dispose of, the further contentions The Associated Press made before it that the enforcement of the Act (1), by the rendition of a money judgment and compelling the reinstatement of Morris Watson, would deny The Associated Press the right to trial by jury in violation of the Seventh Amendment, and the even more serious contention (2) that the freedom of the press would thereby be curtailed in contravention of the First Amendment.

Specifications of Error

The ultimate error is that the Circuit Court of Appeals erred in holding the National Labor Relations Act constitutional as applied to the relations between The Associated Press and its editorial employees (Petition for Certiorari in this cause at page 8).

Summary of Argument

While denying (1) that its silence upon the hearing may be taken as an admission of discrimination against the Guild members, or (2) that the findings of the Board as to such discrimination are supported by substantial evidence, The Associated Press readily concedes that it is opposed to the intervention of the National Labor Relations Board in matters between itself and its editorial employees. The Associated Press believes that the authority claimed by the Board under the National Labor Relations Act is nonexistent for the following reasons:

I. The Act is void in its entirety as an unrestricted attempt to regulate the relationship between all industrial employers and employees, by imposing "collective bargaining" upon them, in violation of the Tenth Amendment.

II. The relation between The Associated Press and its editorial employees is not interstate commerce, does not directly affect such commerce, and is not subject to Federal control.

III. The Act violates the Fifth Amendment and is void because its terms are arbitrary, unreasonable and capricious, having no real and substantial relation to the accomplishment of legitimate ends. In addition the Act denies the right to trial by jury in violation of the Seventh Amendment.

IV. The Act, in its application to The Associated Press, violates the First Amendment to the Constitution which guarantees to citizens freedom of speech and freedom of the press.

POINT I.

The Act is void in its entirety as an unrestricted attempt to regulate the relationship between all industrial employers and employees, by imposing "collective bargaining" upon them, in violation of the Tenth Amendment.

The Associated Press vigorously contends that whether it is or is not engaged, as to any of its activities, in interstate or foreign commerce, its editorial employees in the New York office are not so engaged, and its relations with said employees do not directly affect such commerce, are not subject to any Federal control and, still less, to the control here resisted by it.

But, putting aside these contentions for the moment, it is still apparent (1) that the National Labor Relations Act is not a regulation only of those activities or relations of persons engaged in interstate or foreign commerce which directly affect such commerce, but is essentially a bold attempt by Congress to impose "collective bargaining" on *all industry;* (2) that in this respect the Act is inseverable, because, to construe the Act as designed to single out for regulation only persons, activities and relations in or directly affecting interstate or foreign commerce would deprive the Act of "its very bone and sinew"; and (3) that the entire Act is consequently void as a complete invasion of the powers reserved to the several States by the Tenth Amendment. These three considerations are discussed in the order stated.

1. The Act is not a regulation only of those activities or relations of persons engaged in interstate or foreign commerce which directly affect such commerce, but is essentially an attempt by Congress, unlimited in scope, to impose "collective bargaining" on all industry.

"The National Labor Relations Act" is, perhaps, aptly named, for its preamble, definitions, provisions, and legislative history conclusively show that the occasional references in the Act to interstate and foreign commerce are colorable at best, and that the fundamental and essential object in view is not the regulation of such commerce or of matters which directly affect it but is, on the contrary, the extensive and compulsory supervision by the Federal government of *all industrial labor relations within the Nation.*

The Title of the Act, "To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes," is hardly apposite in view of what follows.* It should be noted at the outset that the Act has nothing to do with "*the* causes of labor disputes" but relates solely to self-organization and collective bargaining on the part of employees in general which, though highly publicized at the time, are merely two among the many possible and familiar causes of disputes between employer and employee. Further, the Act is not confined to particular disputes which directly burden or obstruct interstate commerce; but embraces all labor disputes (at least, in so far as they result from "in-

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* Though the title of a statute may be used in connection with the context as an aid in removing ambiguities, it is no part of the statute and cannot set at naught its obvious meaning. *Fairport P. & E. R. Co.* v. *Meredith*, 292 U. S. 589; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348; *Caminetti* v. *United States*, 242 U. S. 470, 490; *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Goodlett* v. *Louisville & N. R. Co.*, 122 U. S. 391, 408.

equality of bargaining power") on the broad theory that all such disputes, taken together, have a detrimental effect upon interstate commerce.

A. *That the fundamental purpose of the Act is to impose collective bargaining on all industry, no matter how local, appears in the preamble (Section 1).*

The preamble* does not allude to any purpose in the Act to regulate the manner in which intercourse between the States for the purposes of trade shall be conducted. Instead, interstate and foreign commerce are referred to merely as a basis for regulating matters, admittedly such as are not commerce in and of themselves but which, it is claimed, might, when left unregulated, have an evil effect thereon.

Thus, in the first paragraph of the preamble (Section 1), Congress finds that there are two possible causes of "strikes and other forms of *industrial* strife and unrest", namely, "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining". Congress then goes on to find that these forms of industrial strife and unrest "have the intent or the necessary effect of burdening or obstructing commerce". This intent or necessary effect is said to reach attainment by at least one of four possible methods, that is, by

> "(a) impairing the efficiency, safety, or operation of the instrumentalities of commerce;" or
>
> "(b) occurring in the current of commerce;" or
>
> "(c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or

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* The preamble, though no part of the statute (*Yazoo & Mississippi R. Co. v. Thomas*, 132 U. S. 174, 188) may be resorted to in construing ambiguities in the statute. *Beard v. Rowan*, 9 Pet. 301; *Coosaw Mining Co. v. So. Carolina*, 144 U. S. 550. The unambiguous words in the effective provisions of the Act must of course control. *Price v. Forrest*, 173 U. S. 410.

processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or"

"(d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce."

It is clear from this that Congress did not intend to confine the Act to those forms of industrial unrest which actually take place in the current of commerce or among persons operating the instrumentalities of commerce.* The very purpose of Congress as thus disclosed is, on the contrary, to promote self organization and collective bargaining on the part of industrial workers, whether or not such industrial unrest occurs in or about the instrumentalities and flow of commerce. The basic theory is that such unrest, *wherever it occurs*, affects the flow and prices of commodities in commerce or causes diminution of employment and wages in such volume as substantially to impair or disrupt the market for such commodities.

That the effect of industrial unrest upon the purchasing power of the industrial worker, and not merely the location of

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* The only Committee report in Congress which discussed the preamble in any detail was the report of the House Committee on Labor, Report No. 1147, 74th Cong. 1st Sess. (June 10, 1935) on S. 1958, at pp. 8, 9. There is no mention in that report of the assertion in the preamble that industrial unrest has the intent or necessary effect of burdening or obstructing commerce by "(a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce;". Decided emphasis is, however, placed upon the finding that a diminution in industrial wages would affect commerce.

The report of the Senate Committee on Education and Labor, Report No. 573, 74th Cong. 1st Sess. (May 1, 1935) on S. 1958, merely states at page 6: "*Section 1. Findings and declaration of policy.*—This section states the dual objective of Congress to promote industrial peace and inequality of bargaining power by encouraging the practice of collective bargaining and protecting the rights upon which it is based". This statement, of course, referred to the preamble as it was phrased prior to the decision of the *Schechter* case, *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (May 27, 1935).

the unrest, was the primary concern of Congress is further shown by the second paragraph in the preamble. Here Congress finds that "inequality of bargaining power * * * substantially burdens and affects the flow of commerce, and tends *to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.*"

The necessity of including local industry, in order to complete effectively the legislative plan is further illustrated by the finding in the third paragraph that:

> "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of *industrial strife* and unrest, by encouraging practices fundamental to the friendly adjustment of *industrial disputes* arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

Even if these "Findings" of Congress are true (and they have no self-probative force), they prove far too much. They prove that the supervision of the relation between a particular employer and his particular employee, who both happen to be engaged in interstate commerce would have little or no effect on commerce. For it is only by the universal improvement of labor relations in *all* industry, with few exceptions, that the general ability to purchase would be sufficiently promoted to have any tendency whatever materially to increase commerce.

Having made the findings which have been discussed above, Congress then declares it to be:

> "* * * the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by *encouraging the practice and procedure of collective bargaining* and by *protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.*"

This may be "the policy of the United States," but much of the policy thus declared has nothing whatever to do with the actual provisions of the National Labor Relations Act. The Act, as will be seen, is not designed "to eliminate *the causes* of certain *substantial* obstructions to the free flow of commerce", but solely to control and supervise the bargaining between employers and employees in industry, as *one* of the possible causes of certain obstructions to the free flow of commerce. Nor, indeed, is it the policy of the Act "to *mitigate and eliminate* these obstructions *when they have occurred*", for, the Board is given no power whatever to eliminate or mitigate strikes or other obstructions "when they have occurred". On the contrary, the Board is expressly enjoined from interfering with the right to strike "in any way" (Section 13). Thus, the policy of the Act, regarded in its most favorable light, is not to regulate commerce, or even to remove or eliminate *actual* burdens or obstructions thereto, but *solely* to remove "inequality of bargaining" between every employer and his employee as an alleged cause, among many possible causes, of strikes or other forms of industrial unrest. Such forms of industrial unrest are in turn neither substantial,

direct nor imminent obstructions *per se* to interstate or foreign commerce, particularly when compared with other likely obstructions.* The Act, viewed as a whole and in the light of the evils sought to be corrected, is not a regulation of interstate or foreign commerce but is no more and no less than an act to discourage strikes or, more specifically, one to remove "inequality of bargaining" in all private industry.**

B. *This sweeping purpose is even more clearly shown by the very provisions and definitions in the Act.*

The definitions contained in Section 2 of the Act show that, neither the persons, the relations, nor the acts to which the

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* The evidentiary data which has been prepared in support of the Act (Bulletin No. 1 of the National Labor Relations Board, Division of Economic Research, August 1936) merely shows that strikes and other forms of industrial unrest (which apparently result with some frequency from disagreements as to the various phases of collective action on the part of employees) spasmodically interrupt the continuity of production. It would seem that no one would seriously dispute this fact. Many, however, would seriously dispute the contention that the interruptions in production would necessarily and directly result in interruptions of commerce; and, aside from the opinion of "experts," selected by the Board in its preparation of the evidentiary data contained in the Bulletin, there does not appear to be any evidence which plainly shows that interstate commerce, rather than production, would be directly affected by strikes, etc. And, finally, even if the data did show the effect to be on commerce rather than production, it does not even purport to compare, either in point of size, permanency, or causation, obstructions resulting from non-collective action with all other possible obstructions to interstate and foreign commerce.

** The language of an act of Congress is to be read in the light of its policy. *First National Bank of Wellington* v. *Chapman*, 173 U. S. 205. The secondary policy should not defeat the primary policy. *Platt* v. *Union Pacific R. Co.*, 99 U. S. 48.

For the purpose of ascertaining the true meaning and intention of the words of the statute, regard is to be had to the evils which called forth the enactment. *Warner* v. *Goltra*, 293 U. S. 155; *Fazzio* v. *United States*, 272 U. S. 620; *Federal Trade Commission* v. *Western Meat Co.*, 272 U. S. 554.

Statutes are to be construed, if possible, so as to accomplish the object for which they are passed. *Royal Indemnity Co.* v. *Am. Bond & Mort. Co.*, 289 U. S. 165; *Grau* v. *United States*, 287 U. S. 124; *Piedmont & N. R. Co.* v. *I. C. C.*, 286 U. S. 299; *St. Louis & O'Fallon R. Co.* v. *United States*, 279 U. S. 461; *Am. Tob. Co.* v. *Werckmeister*, 207 U. S. 284; *Hamilton* v. *Rathbone*, 175 U. S. 414; *Rhodes* v. *Iowa*, 170 U. S. 412; *Bernier* v. *Bernier*, 147 U. S. 242; *Wood* v. *United States*, 16 Pet. 342.

statute pertains, have any direct or immediate connection with interstate or foreign commerce.

The term "employer" includes *"any* person acting in the interest of an employer" whether or not he is engaged in interstate commerce or in any business directly related thereto. The only exceptions are the United States, the States, and, it is important to note, "any person subject to the Railway Labor Act" or *any labor organization* or officer or agent thereof (Section 2, (2)).

The term *"employee"* includes *"any* employee" and indeed includes "any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice". The only exceptions are "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse" (Section 2, (3)). These exceptions were evidently made for "administrative reasons" only.*

The definition of "commerce" contained in Section 2 (6) of the Act is the orthodox one for interstate or foreign commerce but, as already indicated, and subsequently shown, the Act does not attempt to regulate commerce itself but merely

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*It is stated in the Report of the Senate Committee on Education and Labor, Report No. 573, *supra*, at page 7, *"For administrative reasons*, the committee deemed it wise not to include under the bill agricultural laborers, persons in domestic service of any family or person in his home, or any individual employed by his parent or spouse. But after deliberation, the committee decided not to exclude employees working for very small employer units. The rights of employees should not be denied because of the size of the plant in which they work".

Mr. Marcantonio, of the House Committee on Labor, dissented from the report of the majority on the ground, among others, that the Bill did not apply to agricultural workers. He concluded his dissent as follows:

> "I, therefore, respectfully submit that there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill. *The same reasons urged for the adoption of this bill in behalf of the industrial workers are equally applicable in the case of the agricultural workers, in fact more so as their plight calls for immediate and prompt action."* (See House Report No. 1147, *supra*, at p. 30.)

certain local activities and relations which, whether precedent or subsequent, are said to have a bearing on it.

For this reason the definition of "affecting commerce" contained in Section 2 (7) of the Act is of particular interest. The phrase "affecting commerce" is there defined to mean "in commerce or burdening or obstructing commerce or the free flow of commerce [but not directly], *or having led or tending to lead to a labor dispute* burdening or obstructing commerce or the free flow of commerce". Though skillfully phrased, *this definition necessarily means that "the denial by employers of the right by employees to organize and the refusal of employers to accept the procedure of collective bargaining" are matters "affecting commerce."* This is so because Congress had previously found in the first paragraph of the preamble (Section 1) that these two particular acts on the part of all employers lead to labor disputes which have the intent or the *necessary effect* of burdening or obstructing commerce.* It should be noted that the term "direct effect" is not to be found within the statute.

The term "labor dispute", as defined in Section 2 (9) of the Act broadens, if anything, the meaning of "affecting commerce" because it includes *"any controversy* concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether the disputants stand in the proximate relation of employer and employee".*

Turning from the definitions to the active provisions of the statute, it should be first noted that there is no language designed to limit them to persons, activities, or relations in or directly affecting interstate commerce. The provisions in

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* The statute must be taken as a whole. The meaning of a word or phrase is to be gathered from its context. *Helvering* v. *Morgan's*, 293 U. S. 121; *U. S.* v. *Murdock*, 290 U. S. 389; *Alexander* v. *Cosden Pipe Line Co.*, 290 U. S. 484; *Costanzo* v. *Tillinghast*, 287 U. S. 341; *D. Ginsberg & Sons* v. *Popkin*, 285 U. S. 204; *Tex. & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

Sections 3, 4, 5, and 6, setting up the National Labor Relations Board, contain no such limitation; the provisions of Sections 7 and 8, relating to the so-called "rights of employees" contain no such limitation; nor is any such limitation found in the provisions of Section 9, concerning representatives and elections, nor even in the provisions of Section 10 providing for the machinery of enforcement, nor, finally, in the provisions of Section 11, conferring upon the Board broad investigatory powers. Indeed, the so-called "limitations" set forth in Sections 13, 14, 15, and 16, do not mention interstate commerce in any way and clearly do not seek to restrict the power of the Board to matters in or directly affecting such commerce. The penalties provided in Section 12 are co-extensive with the powers of the Board.

Were it not for the title, preamble, and definitions of the Act, broad, sweeping and vague as they are, one would not even suspect that the Act purported to be a regulation of interstate or foreign commerce or of matters directly relating thereto. Commerce is referred to but twice throughout the effective provisions of the Act. The first mention of the word is found in Section 9 (c) providing that "whenever a question *affecting commerce* arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties in writing the name or names of the representatives that have been designated or selected". The second and last mention of the term within the body of the Act is found in Section 10 (a) providing that "the Board is empowered, as hereinafter provided, to prevent *any person* from engaging in *any* unfair labor practice (listed in section 8) affecting commerce".* Except in these two places

* *Quaere* whether this phrase "affecting commerce" is merely a repetition of the declaration and findings in the preamble to the effect that all "unfair labor practices" affect commerce; or whether it is intended as a limitation of the jurisdiction of the Board to matters "affecting commerce" as that phrase is sweepingly defined in Section 2(7). But, because of the breadth of this statutory definition of "affecting commerce" and the avowed policy of the Act to prohibit all "unfair practices," any possible ambiguity resulting from the phrase as used above in the text of the Act, is of no great import.

the power of the Board has no relation to interstate commerce at all. And even with a question concerning representation or the prevention of "any unfair labor practice", the power of the Board is not confined to interstate commerce itself or to matters *directly* affecting it, but is solely limited by the phrase "affecting commerce" as broadly defined in Section 2 (7) of the Act. Thus, the Board is empowered (if not directed) by the terms of the Act to investigate, control, and adjust labor relations all over the country, no matter how private, no matter how internal or domestic, and without regard to the jurisdiction of Congress over interstate commerce. Indeed the Board itself has so construed the Act. It, as the recent compilation of its decisions shows, has begun proceedings against all kinds of employers in local industry.*

And yet, the Court below apparently assumed (R. 442) that the Act is in substance a regulation of commerce because unequal and unregulated bargaining between employer and employee may lead to strikes and industrial strife which, as the preamble asserts, "have the intent or the necessary effect of burdening or obstructing commerce". The assumption, as we have seen, finds no support in the Act. No provision is to be found within the four corners of the Act authorizing the Board to interfere with, impede, or diminish an *actual* obstruction to interstate commerce in the form of strikes or any

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At any rate, the phrase "affecting commerce" was not intended as a limitation of the jurisdiction of the Board to matters "*directly* affecting commerce," as that phrase has been employed in previous decisions of this Court. (See the legislative history of the Act which is discussed immediately hereafter.)

* See, in addition to the group of cases now before the Court, the proceedings and decisions of the Board, compiled in Commerce Clearing House, Labor Law Service, pp. 15,401, *et seq.* paragraphs 15,401, *et seq.* and, particularly, the names of the persons proceeded against (*Id.* at pp. 15,991, *et seq.*).

It is understood that the Labor Board has separately published a complete compilation of its decisions, which should be available by the time of argument.

other form. On the contrary, Section 13 of the Act expressly provides that:

> *"Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."*

Can Congress thus sanction the very obstruction that it purports to prevent? Even if it could, it would still seem that the Act can only be considered as an attempt, by regulatory process, to improve the bargaining status of the industrial worker no matter what may be the field of his activity. This is not in any true sense a regulation of commerce between the States.

C. *The legislative history of the Act leaves no possible doubt as to the essentially universal purpose of the Act.*

The three Committee Reports in Congress clearly explain the intent of Congress in regard to the interpretation and application of the National Labor Relations Act.* On the first page of all three Reports, S. 1958, from which the Act is derived, was described as a bill "to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes". There was no men-

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* The House Committee on Labor submitted two reports on S. 1958. The first report was rendered before the decision of this Court in *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495 on May 27, 1935 (Report No. 972, 74th Cong., 1st Sess., May 21, 1935). The second report was submitted shortly after the *Schechter* decision (Report No. 1147, 74th Cong., 1st Sess., June 10, 1935). The Senate Report was rendered prior to the decision in the *Schechter* case (Report No. 573, 74th Cong., 1st Sess., May 1, 1935).

It is well settled that House or Senate Committee Reports may be regarded as an exposition of the legislative intent in determining the purpose and meaning of a statute when subject to doubt. *United States* v. *Shreveport Grain & Elevator Company*, 287 U. S. 77, 83-85; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Railroad Commission of Wisconsin* v. *Chicago B. & Q. R. R. Co.*, 257 U. S. 563; cf. *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245, 253.

tion of interstate commerce or of the fact that labor disputes might be a burden and obstruction thereto.

One is immediately struck, in reading these reports, with the frequent reference to industry, to the assertions that it is essential to enforce collective bargaining on behalf of all workers in industry, and to the lack of any mention of workers engaged in actual transportation or in the "current of commerce".

It is also interesting to note that the decision of this Court in *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, did not in any way deter Congress from its original and primary purpose of extending and re-enforcing Section 7(a) of the N. I. R. A. by further legislation. The *Schechter* decision did bring about certain changes in the draftsmanship of the bill, but none whatever in its substance.* The most radical changes were (1) that the present preamble was adopted in entirely new form and (2) that the definition of "commerce" was changed by substituting "commerce, transportation, or communication" for "or commerce, or any transportation or communication relating thereto." As a substitute for the former definition of "commerce," however, an entirely new definition of "affecting commerce" was substituted in Section 2(7) of the Act.

That Congress did not intend these changes to restrict the scope of the Act to relations or activities in or directly affecting interstate commerce is shown by the following statement of the House Committee on Labor in regard to the new preamble (June 10, 1935 report, *supra*, at p. 9):

> "The committee amendment to this section reformulates the declaration of policy in order to *emphasize the intent of the bill to promote industrial peace*,

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* The alterations resulting from the *Schechter* decision are shown in the House Report of June 10, 1935, at pages 1-3.

and therefore to bring it more clearly outside of the ruling in the Schechter case."

The Senate Committee Report, although submitted prior to the *Schechter* decision, took the same attitude. It stated (p. 1):

> "The first objective of the Bill is to promote industrial peace."

and went on to say (p. 3):

> "The second major objective of the Bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of contract."

The Senate Committee, as well as the House Committee, was of the opinion that the Act was constitutional even though it involved all industry and was not restricted to interstate commerce activities. It said on the question of constitutionality (p. 18):

> "In effect upon commerce, wage levels are as significant as price levels, for the exchange of goods depends as much upon the consumer's income as upon the price which he must pay. Income and cost of living must be indexed in terms of each other. An analysis of the effect of a decline in mass purchasing power upon all commercial transactions forces the conclusion that the protection of Nation-wide commerce depends as much upon a floor for wages as upon a ceiling for prices. *And in stabilising wages, no factor plays a more important role than collective bargaining."*

2. In this respect the Act is inseverable. Its scope cannot be limited by construction or by the separability clause (Section 15*).

It is true that Section 15 of the Act contains the usual separability provision, but it cannot be supposed that Congress thereby intended to permit the courts, by construction, to change the essential purpose of the Act. The declaration of separability merely reverses the presumption that the Act shall be wholly void unless it is permitted to operate in its entirety. "But", as the majority of this Court stated in *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, 362, "notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, *we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole*". To the same effect see *Carter* v. *Carter Coal Company*, 298 U. S. 238, 312-317; *Hill* v. *Wallace*, 259 U. S. 44, 70; *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242.**

As we have seen, the preamble, definitions, provisions, and legislative history of the National Labor Relations Act conclusively show that the essential purposes of the Act are (1) to promote industrial peace throughout all industry, and (2) to stabilize or even increase wages and employment throughout the country by compelling all employers in in-

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* "SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

** On the inadvisability of rewriting a statute in order to save its validity see also: *United States* v. *Reese*, 92 U. S. 214; *Trade-Mark Cases*, 100 U. S. 82; *United States* v. *Harris*, 106 U. S. 629; *Baldwin* v. *Franks*, 120 U. S. 678; *James* v. *Bowman*, 190 U. S. 127; *Illinois Central R. R.* v. *McKendree*, 203 U. S. 514; *First Employers' Liability Cases*, 207 U. S. 463; *Butts* v. *Merchants Transportation Co.*, 230 U. S. 126; *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500.

dustry to bargain collectively with their employees, and by encouraging self-organization among such employees. If then the Act, by some forced construction, were confined in application to employers and employees actually engaged in interstate commerce, these very purposes for which it was enacted would be totally defeated. Congress did not intend to favor employees engaged in interstate commerce over those engaged in industry. No indication can be found within the four corners of the Act, or in its legislative history, of an intention to benefit persons engaged in interstate transportation except in so far as such persons might incidentally fall within the general classification of industrial workers. With persons subject to the Railway Labor Act expressly excepted by the National Labor Relations Act (Section 2(2)), few employees among those remaining would be benefited by a restriction of the Act to persons actually engaged in interstate or foreign commerce. So to construe the Act would practically nullify it.

The "very bone and sinew" of the Act viewed as a whole is, therefore, the attempt to enforce by compulsion the rights of all employees as declared in Section 7. As Mr. Justice Cardozo said of the similar provisions of Section 7(a) of the N.I.R.A., in relation to the entire statutory scheme (concurring opinion in *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 555):

> "*Wages and the hours of labor are essential features of the plan, its very bone and sinew.* There is no opportunity in such circumstances for the severance of the infected parts in the hope of saving the remainder. A code [or a statute] *collapses utterly with bone and sinew gone.*"

3. The entire Act, being essentially a regulation of the employer-employee relationship in all industry, local or nation-wide, is a patent violation of the Tenth Amendment.

As the Act is nothing more than an attempt by Congress to regulate employer-employee relations in all industry, in the hope thereby to promote the general welfare, it is devoid of any constitutional foundation. It is well established that the powers of Congress are limited to those expressly delegated to it by the Constitution or to be implied therefrom, and that, consequently, Congress has no general welfare power. *Carter* v. *Carter Coal Co.*, 298 U. S. 238; *United States* v. *Butler*, 297 U. S. 1. See also *Jacobson* v. *Massachusetts*, 197 U. S. 11, 22. Accordingly, if the National Labor Relations Act is to be sustained, it can only be sustained if it is, in substance and effect, a valid regulation of interstate or foreign commerce, pursuant to the commerce power of Congress. Indeed the authors of the Act made no pretense to the contrary. Thus the House Committee on Labor says in its June 10, 1935 report, *supra*, at page 10:

> "The bill is based *squarely* on the power of Congress to regulate commerce among the several States and with foreign nations."

But Congress, in other legislation now standing on the statute books, has already declared: "The labor of a human being is not a commodity or article of commerce." (Clayton Act, §6, c. 323, §6, 38 Stat. 731.) And that the regulation of the employer-employee relationship in all industry, no matter how local, is not in any just sense a regulation of interstate or foreign commerce should require little if any elaboration. There appear to be few propositions in the realm of Constitutional Law which are more fundamen-

tal or more clearly settled. Mere reference to the recent decisions in *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, with regard to hours and wages, and *Carter* v. *Carter Coal Co.*, 298 U. S. 238, with regard to hours, wages and collective bargaining, should be amply sufficient.*

Nor should it be necessary to enlarge upon the statement that there is no constitutional means of accomplishing an unconstitutional end. Ever since the famous case of *McCulloch* v. *Maryland*, 4 Wheat. 316, 423, no one has supposed that Congress could "* * * under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government * * *."

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* Manufacture is not commerce. *Kidd* v. *Pearson*, 128 U. S. 1, 20; *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12.

The fact that the finished product is eventually sold and delivered beyond the state does not convert production, manufacture or processing into interstate commerce. *Coe* v. *Errol*, 116 U. S. 517; *Delaware, Lackawanna & Western RR Co.* v. *Yurkonis*, 238 U. S. 439, 444; *Hammer* v. *Dagenhart*, 247 U. S. 251, 272; *Crescent Oil Co.* v. *Mississippi*, 257 U. S. 129, 136; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 178; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, 235; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 182; *Chassaniol* v. *City of Greenwood*, 291 U. S. 584; *Carter* v. *Carter Coal Co.*, 298 U. S. 238.

Nor does the fact that the raw products used in manufacturing or processing originate beyond the state convert that manufacturing or processing into interstate commerce. *General Oil Company* v. *Crain*, 209 U. S. 211; *Schechter Corp.* v. *United States*, 295 U. S. 495, 543.

And the fact that the material manufactured or processed has been shipped in from another state and is going to be shipped out to a third state does not necessarily convert the manufacture or processing into interstate commerce. See *Arkadelphia Co.* v. *St. Louis S. W. Ry.*, 249 U. S. 134, 151; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* (C. C. A. 5th June 15, 1936) 83 F. (2) 998; *National Labor Relations Board* v. *Friedman-Harry Marx Clothing Co. Inc.* (C. C. A. 2d 1936) 85 F. (2) 1; *Pratt* v. *Stout* (C. C. A. 8th 1936) 85 F. (2) 172; *Fruehauf Trailer Co.* v. *National Labor Relations Board* (C. C. A. 6th 1936) 85 F. (2) 391; *Foster Bros. Mfg. Co.* v. *National Labor Relations Board* (C. C. A. 4th 1936) 85 F. (2) 934.

Since production, manufacture and processing are not interstate commerce, the labor relations of those engaged in such activities do not, *a fortiori*, so directly affect interstate commerce as to become subject to Federal regulation. *Carter* v. *Carter Coal Co.*, 298 U. S. 238; *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495; Cf. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 with *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

It has always been understood that, as Mr. Chief Justice Marshall further stated (p. 423), "it would be *the painful duty of this tribunal,* should a case requiring such a decision come before it, to say that such an act was not the law of the land." Nor can it be said that this Court has ever shirked its duty, no matter how painful, by allowing mere form to destroy substance.* Indeed, there have been no divergent opinions in this Court as to the duty itself, but simply as to the occasion for its performance.

Here there is no question of construction; there is no room for inference. In form, substance and basic purpose, the Act is an attempt by Congress to control hours, wages, conditions and continuity of employment, in industry, by compelling all industrial employers to accept the principle of collective bargaining in its most extreme form.

As conclusively proved in the decisions of *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495, and *Carter* v. *Carter Coal Company,* 298 U. S. 238, an attempted regulation, so unlimited in scope, could not possibly be a valid exercise by Congress of its commerce power.

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* *Hammer* v. *Dagenhart,* 247 U. S. 251; *Child Labor Tax Case,* 259 U. S. 20; *Linder* v. *United States,* 268 U. S. 5; *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330; *Schechter Corp.* v. *United States,* 295 U. S. 495; *United States* v. *Constantine,* 296 U. S. 287; *United States* v. *Butler,* 297 U. S. 1; *Carter* v. *Carter Coal Co.,* 298 U. S. 238.

POINT II.

The relation between The Associated Press and its editorial employees is not interstate commerce, does not affect such commerce, and is not subject to Federal control.

If the National Labor Relations Act is not void in its entirety because of its unrestricted scope, it still does not follow that the Act can be constitutionally applied to the AP and its relations with Morris Watson or its other editorial employees. On the contrary, the uncontroverted facts of the record and a wealth of decisions plainly show that the relations between the AP and its editorial employees are not interstate commerce, do not directly affect it, and are not subject to Federal control.

1. The power of Congress is strictly confined to the regulation of interstate commerce and those matters by which it is directly affected.

Interstate commerce is an act and like other acts must be performed by men. It is done "by the labor of men and with the help of things," but it is only while or so long as they are engaged (1) in the act of interstate commerce itself or (2) in activities which directly affect the act of interstate commerce by others, that men come within the reach of Federal power.

This is axiomatic. It is equally axiomatic that the right to engage in interstate commerce is a natural right which antedates the Constitution and which Congress can neither grant nor withhold at its pleasure. It may regulate it in order to preserve the freedom and safety of interstate commerce and as a corollary it may go on to prevent the abuse of the right itself. Thus the freedom and safety of commerce

are the cardinal objectives of such statutes as the Interstate Commerce Act, the Safety Appliance and other Railroad Acts and of the various anti-trust laws. The prevention of abuse supplies the basis for the Lottery Act, the Pure Food and Drug Act, the Motor Vehicle Act, and statutes of like character. To protect the right to engage in interstate commerce, by prescribing rules for its guidance, and to prevent the abuse of that right to the public detriment—these are the plain guideposts for Congressional action. Confusion arises only when they are forgotten or ignored.

In one decision after another this Court has labored with tireless industry to make all this clear. Not a line in any one of its opinions lends countenance to the idea that the commerce power can be stretched to reach the regulation of lawful industry which, even though it may furnish the materials later to be utilized in commerce, is not commerce in and of itself. By a labored reasoning from remote cause to ultimate effect, an effort to the contrary has been often made and has, as often, been repulsed.*

2. An interruption in the process of production or manufacture (or in the case at bar, the procurement of news), although it may lessen the supply of goods available for commerce, is not per se an obstruction to commerce nor does it directly affect it.

The reasoning by which the Board and the Court below reached the conclusion that this Act could be lawfully applied to the AP and its employees followed a familiar and, as this Court has repeatedly held, a futile course. The AP

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* *First Employers' Liability Cases*, 207 U. S. 463; *Hammer* v. *Dagenhart*, 247 U. S. 251; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330; *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495; *Carter* v. *Carter Coal Co.*, 298 U. S. 238. See also cases cited in footnote page 35, above.

in its business of gathering and transmitting news is engaged it is said in interstate commerce; this news must be gathered or rewritten by its editorial employees before it can be transmitted; dissatisfaction on the part of these employees might lessen their efficiency or bring on labor disputes or strikes; strikes might or would cut off the supply of news available for transmission; such failure of supply would obstruct or suspend the existing commerce; and self-organization and compulsory collective bargaining would tend to avert strikes. So, making a leap to the pre-determined conclusion, it is asserted that Congress may enforce collective bargaining in order to remove a possible obstruction to commerce.

Many years ago this method of reasoning was described as "the house that Jack built."* Its fallacy lies in that it spins out too fine the chain of cause and effect and succeeds, as this Court has had frequent occasion to remark, in proving too much. According to the philosophers, the chain of cause and effect has never been broken since Time began, but it is not by such speculations that the Constitution is to be interpreted and statutes sustained. It is direct causes operating directly upon interstate commerce with which Congress is empowered to deal. There may be borderline cases (of which the present is certainly not one), but the principle is clear.

"Obstruction to coal mining," said this Court in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 408,

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* Letter by Jefferson, from Philadelphia, on the 30th day of April, 1800, to Robert R. Livingston:

"We are here [Philadelphia] engaged in improving our constitution by construction, so as to make it what the majority thinks it should have been. The Senate received yesterday a bill from the Representatives incorporating a company for Roosevelt's copper mines in Jersey. This is under the *sweeping clause* of the Constitution, and supported by the following pedigree of necessities. Congress are authorized to defend the country; ships are necessary for that defense; copper is necessary for ships; mines are necessary to produce copper; companies are necessary to work mines; and 'this is the house that Jack built.'" (VII Ford's Ed. Jefferson's Works, 444.)

"is not a direct obstruction to interstate commerce in coal although it, of course, may affect it by reducing the amount of coal to be carried in that commerce." And in *United Leather Workers* v. *Herkert,* 265 U. S. 457, it was said that "the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce."

We shall seek later to demonstrate that the assumption of the Court below that the editorial employees of the AP are engaged in interstate commerce is untenable, but the further assertion that labor disputes between them and their employer might or would directly affect such commerce by burdening, obstructing, or seriously impeding its flow, is incomprehensible in the light of this Court's decisions. Manifestly the effect would be quite as remote and no more direct than that produced by labor disputes in any producing industry (*Carter* v. *Carter Coal Company,* 298 U. S. 238; *Schechter Poultry Corp.* v. *U. S.,* 295 U. S. 495; *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344).

Indeed, so far as this record shows, a walkout in the New York office would not of necessity materially affect the flow of news. At the hearing before the Trial Examiner the attorney for the Board made a valiant effort to establish factually that a strike or lockout of the editorial employees of the New York office of the AP would completely cut the flow of news (R. 64-69, 102-103, 165-168), and the Board, as well as the Trial Examiner, found that such a disturbance in the New York office "would seriously impede, if not prevent the issuance of newspapers in all parts of the country" (R. 42, 431). There is no evidence in the record to sustain this finding. Indeed, the attorney for the Board, while repeatedly pressing the point, merely proved that a sudden walkout of all the editorial employees in the New York office would

result in but a "momentary, a temporary condition" (R. 167). Moreover, it was clearly established in the record that this condition would not seriously impair the flow of news in other parts of the country, the New York office being merely one point in an extremely decentralized system. Even with European news which ordinarily comes to the cable desk in New York, a stoppage in the New York office would not prevent such news from reaching other parts of the country. As the record shows, "some situation may develop where communications have been disrupted in the ordinary channel and it will flow in another channel" (R. 64). As the record further shows, the AP is well guarded and protected against any physical interruption of the normal movement of news by being constantly prepared to reroute or detour the news (R. 65). It is a pure assumption, therefore, that a strike in the New York office would have a material and destructive effect on the amount or quality of the AP news flowing from state to state. Finally it is common knowledge that the AP is not the only news-gathering agency, and the record shows that its reports are not the only news published by its member papers (Guild Exs. G-1 to G-10, inclusive).

The Court below very properly placed no reliance upon the other consequences which are alleged in the preamble of the Act as those which it is designed to prevent, such as the depression of wage rates and purchasing power, the impairment or disruption of the market. To do so would be to draw out even thinner the thread of causality and to make even more expansive an argument which, as we have said, has already proved far too much for its own good. For it must be clear that if Congress can pass a law to compel collective bargaining and to forbid the discharge of employees, as prescribed by Section 8, it can, when it chooses, go on to laws compelling in express terms the closed shop, the open shop, maximum and minimum wages, hours of employment, safety

devices, sanitary arrangements, housing, the times and manner of payment—everything in short which by any possibility could be thought to promote the contentment of the laborer in any and every industry and thus lead to industrial peace.

The question of power does not turn upon the relative importance of this subject matter or of that. On the contrary, as was said in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 307-308,

> "The distinction between a direct and an indirect effect turns, not upon the magnitude of the cause or of the effect, but entirely upon the manner in which the effect has been brought about."

3. The AP is in no sense an instrumentality of interstate commerce. Its editorial employees, including the complainant Morris Watson, are not engaged in interstate or foreign commerce.

That the AP is not an instrumentality of interstate commerce would seem to be too clear for argument. It is not a carrier for hire. Its services and facilities are not open to the public. Neither it nor its employees have assumed any obligation of continuous service, the performance of which may be compelled by law. It is essentially, as we have pointed out, a private, cooperative, non-profit organization. It is under no obligation to furnish news to anyone except in accordance with its by-laws and its mutual exchange contracts. There is no reason, so far as any law is concerned, why the AP should not be free to close its New York office or indeed all of its offices whenever it may so please. It may cease its business altogether whenever it sees fit. The present intervention by the Federal Government, therefore, is not directed to the regulation of the AP as an instrumentality through which the general public carries on its business in interstate commerce, but is an effort to control the conduct of the AP

itself on the sole excuse that it is hoped thereby to prevent the possible interruption of its business by persons other than itself.

That the AP, as to some of its activities, may be engaged in interstate or foreign commerce is not decisive. Certainly it is not so engaged throughout. Indeed it may be questioned whether the major portion of its activities falls within the accepted definition of the term. For commerce means more than communication. The word "is the equivalent of the phrase 'intercourse for the purposes of trade'." (*Carter* v. *Carter Coal Co.*, 298 U. S. 238, 303.)

"Basically, The Associated Press is an exchange of news system" and nothing more (R. 88).* Even if this exchange were the equivalent of a sale, it would not amount to "trade" because The Associated Press does not exchange news with the public. The exchange is between The Associated Press, its own members and other news agencies (R. 71-73, 87-89, 97-98, 152-154).

So far as exchange of news between AP offices or with its members is concerned, the exchange is, in many respects, similar to communication between principal and agent.**

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* It is true that The Associated Press at one time had an arrangement whereby Keystone View Company on occasion received pictures of The Associated Press which had lost their news value. Such an arrangement, as clearly shown in the record (R. 164-165), was merely a salvage operation.

** In a long line of decisions this Court has held certain businesses not to be interstate commerce, although it was obvious that such businesses constantly used the mails or instrumentalities of commerce. Insurance companies (*Paul* v. *Virginia*, 8 Wall. 168; *New York Life Ins. Co.* v. *Deer Lodge County*, 231 U. S. 495); those buying and selling bills of exchange (*Nathan* v. *Louisiana*, 8 How. 73); those receiving deposits and sending them abroad (*Engel* v. *O'Malley*, 219 U. S. 128); those dealing in negotiable notes (*Hemphill* v. *Orloff*, 277 U. S. 537); those buying and selling cotton futures (*Ware and Leland* v. *Mobile County*, 209 U. S. 405); advertising agencies (*Blumenstock Brothers* v. *Curtis Publishing Company*, 252 U. S. 436); and those giving entertainments (*Federal Base Ball Club* v. *National League*, 259 U. S. 200; *Hart* v. *B. F. Keith Vaudeville Exchange*, 12 F. (2d) 341 (C. C. A. 2nd, 1926), cer. den. 273 U. S. 703); agents reporting credit standings to their employer in another state (*United States Fidelity and Guaranty Company* v. *Kentucky*, 231 U. S. 394), were held not to be engaged in interstate commerce.

Almost all of these cases involved continuous communication between principal and agent.

This exchange is not a publication sufficient to sustain an action for libel (*Lehner* v. *Associated Press* (Wis. 1934), 215 Wis. 254, 254 N. W. 664) or to constitute an abandonment of property rights in the news (*International News Service* v. *Associated Press*, 248 U. S. 215). Private or intracorporate exchange is not interstate commerce. See *The Pipe Line Cases*, 234 U. S. 548, 561-562; *Hopkins* v. *United States*, 171 U. S. 578, 603; *Anderson* v. *United States*, 171 U. S. 604, 612.

In *The Pipe Line Cases, supra*, the Court said, in holding that the Uncle Sam Oil Company, having a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two, was not engaged in interstate commerce (p. 562):

> "It would be a *perversion of language*, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, *the transportation being merely an incident to use at the end.*"

Thus it would be a still greater perversion of language to say that The Associated Press in communicating with itself is engaged in interstate commerce, for it does not even own the facilities for transportation, as was the case with the Uncle Sam Oil Company.*

Nor does the communication or exchange of news with other news agencies, being purely incidental to the private exchange with members, necessarily constitute interstate

* The "leased wires" or special service contracts of the AP with the communication companies, such as the telephone company, are "just the same as you contracting for taking advantage of one of their rates for long distance telephone calls" (R. 185).

commerce. The case of *International Textbook Company* v. *Pigg*, 217 U. S. 91, relied upon by the court below as indicating that the exchange of news is interstate commerce, is clearly distinguishable. There a correspondence school, engaged in the constant interstate transmission of books, apparatus and papers for a profit, was in effect selling such commodities to the public, and was consequently held to be engaged in interstate commerce. See also to a similar effect *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 276.

But whether the AP is primarily or only incidentally engaged in interstate commerce is immaterial. It is plain that all of its activities do not constitute interstate commerce and it is well settled that the regulation of so much of a business as constitutes interstate commerce can not be extended to embrace the rest. (*First Employers' Liability Cases*, 207 U. S. 463, 502; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330; *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 282 U. S. 311, 327, cf. *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1.)

The functions of its editorial employees have been hereinbefore described. It is established that the business of the AP in its New York office consists of two distinct functions, namely, production and transmission. The definition given of the editorial employees is that they are the employees of the AP who are engaged exclusively in production. They have no connection with the physical transmission of news. "They are producing some elements that go into the news service of The Associated Press in its many forms" (R. 137). In this sense the analogy is exact between these employees and the employees of a manufacturing plant engaged in transforming the raw materials into the completed article. The speed of their production, the shortness of the interval between production and transmission, do not change the essen-

tial character of either function. (*Utah Power & Light Co. v. Pfost*, 286 U. S. 165.)

The famous pronouncement of Chief Justice White in the *First Employers' Liability Cases*, 207 U. S. 463, 502, is apposite:

> "It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. *To state the proposition is to refute it.* It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since *it treats the right to engage in interstate commerce as a privilege* which cannot be availed of except upon such conditions as Congress may prescribe, even althongh the conditions would be otherwise beyond the power of Congress. *It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures.*"

4. The so-called "throat, current or flow" cases, the transportation and the "strike" or anti-trust cases, lend no support to the claim that disputes between employer and employee in general industry, per se directly affect, burden or obstruct interstate commerce.

The decisions of this Court which have been advanced below in support of the Act, in its application to the relations between The Associated Press and its editorial employees, naturally fall into three separate groups. These groups may be conveniently described as (a) the "throat," "current" or "flow" of commerce cases, (b) the railroad cases, which include *Texas and New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks,* 281 U. S. 548, and (c) the "strike" cases arising under the anti-trust laws.

A. *The "throat," "current" or "flow" of commerce cases.*

None of the so-called "throat" or "current" of interstate commerce cases deals with the regulation of employer-employee relations by Congress or, more specifically, with the power of Congress to compel collective bargaining and prevent the discharge of employees who are members of labor organizations. See *Swift & Co.* v. *United States,* 196 U. S. 375; *Stafford* v. *Wallace,* 258 U. S. 495; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; and *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

These cases have no application whatever to the attempted regulation of The Associated Press and its relations with its editorial employees. In all of them the persons and things regulated were expressly held to be necessary instrumentalities or agencies of interstate commerce, affected with a national public interest, and therefore subject to the regula-

tions in question, which related exclusively to matters in, directly affecting, or inextricably intermingled with, interstate commerce. That is not the case with The Associated Press. Furthermore, the "flow" cases advance no new doctrine, but only hold that Congress may properly keep certain persons from obstructing or closing the avenues of commerce to other persons. Likewise, even when Congress does not act, the individual States are themselves prohibited from obstructing, burdening or discriminating against interstate commerce. *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U. S. 282; *Lemke* v. *Farmers Grain Company*, 258 U. S. 50. Thus, A may be compelled to abstain from obstructing B. By this present Act, however, the attempt is made to regulate C in order to prevent him, forsooth, from obstructing himself or permitting himself to be obstructed.

Tagg Bros. v. *United States, supra*, is the only "current of commerce" case which directly involved the power of the Federal Government to regulate personal services. But there the services were rendered to third persons, and, as the Court said (p. 438):

> "There is nothing in the nature of *monopolistic personal services* which makes it impossible to fix reasonable charges to be made therefor * * *."

Although the scope of the commerce power was not a subject of contention in the case,* the Court did state (p. 439):

> "Plaintiffs perform an indispensable *service* in the interstate commerce in live stock. They enjoy a

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* As the Court observed (p. 433):

"The plaintiffs conceded below that, being engaged in interstate commerce at public stockyards, they are subject to some regulation by Congress."

> substantial *monopoly* at the Omaha Stock Yards. They had eliminated rate competition and had substituted therefor *rates fixed by agreement among themselves, without consulting the shippers and others who pay the rates.* They had bound themselves to maintain uniform charges regardless of the differences in experience, skill and industry. The purpose of the regulation attacked is to prevent their *service* from thus becoming an undue burden upon, and obstruction of, that commerce."

The words of this Court, recently uttered in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, would seem adequately to dispose of the current of commerce cases as a precedent here. There the Court said (p. 305):

> "If the court had held that the raising of the cattle, which were involved in the *Swift & Co.* case, including the wages paid to and working conditions of the herders and others employed in the business, could be regulated by Congress, that decision and decisions holding similarly would be in point; for it is that situation, and not the one with which the court actually dealt, which here concerns us."

The work of the editorial employees in the New York office of The Associated Press in respect of news, presents, if analogy is permissible, a situation identical in legal contemplation with the work of herders in respect of cattle. For the New York office of the AP is not a "throat" through which the commerce of the country flows. No persons other than its own members are called upon to meet any part of its costs or pay for the services it renders. And important as its news-gathering activities may be, they are not in any legal sense "affected with a national public interest."

B. *The railroad cases.*

Such regulation as Congress has attempted of the relation between employer and employee on the railroads is bottomed on the fact that the railroads are the essential instrumentalities by which interstate commerce is carried on and may be compelled to furnish safe and continuous service of transportation.

The commerce power, is, of course, given its "*widest range* in dealing with railroads, which are engaged as common carriers in interstate transportation." * Where a regulation of such railroads is invalid, *a fortiori,* it would be invalid if applied to The Associated Press, a private membership corporation engaged exclusively in a private business. And yet, extensive as the power of Congress over the railroads may be, it will be seen that the regulation of the employer-employee relation on railroads has never been permitted to reach beyond (a) the removal of actual or immediately threatened obstructions to interstate transportation service, or (b) obvious measures for the promotion of the safety of such service.**

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* After defining the power of Congress to regulate commerce the Chief Justice said, while dissenting in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 376:

"And the exercise of the power, thus broadly defined, has had the *widest range* in dealing with railroads, which are engaged as common carriers in interstate transportation. As their service is vital to the nation, nothing which has a real or substantial relation to the suitable maintenance of that service, or to the discharge of the responsibilities which inhere in it, can be regarded as beyond the power of regulation. *The Shreveport Case*, 234 U. S. 342, 351; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 478; *Colorado* v. *United States*, 271 U. S. 153, 163, 164; *N. Y. Central Securities Corp.* v. *United States*, 287 U. S. 12, 24, 25."

** It is well settled that Congress may remove actual tangible obstructions to the highways of interstate commerce by the use of force or by the more peaceable remedy of injunction. *In re Debs*, 158 U. S. 564. Up to and including the time of the decision in the *Debs* case the expres-

The constitutionality of an attempt by Congress to regulate the relationship of employer-employee was first raised in the *Employers' Liability Cases*, 207 U. S. 463, concerning the Act of June 11, 1906 (c. 3073, 34 Stat. 232) abolishing the fellow servant rule in suits involving the liability of common carriers in interstate commerce to their employees.*

The majority of the Court held the Act unconstitutional because it was not confined to railroad employees, as well as employers, while actually engaged in interstate commerce. Mr. Justice White, in delivering the majority opinion, refused to accept the contention that Congress could not regulate em-

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sion "removal of obstructions" to interstate commerce related solely to physical and tangible obstructions, such as dams or bridges across navigable streams, but never to the causes or possible causes of physical obstructions. See: *Willson* v. *Black Bird Creek Marsh Co.*, 2 Pet. 245; *Gilman* v. *Philadelphia*, 3 Wall. 713, 724; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518; 529-530. See also the subsequent cases of *Union Bridge Co.* v. *United States*, 204 U. S. 364; *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177; *Hannibal Bridge Co.* v. *United States*, 221 U. S. 194; *Louisville Bridge Co.* v. *United States*, 242 U. S. 409.

It is equally well settled that Congress may insure the safety of transportation on the highways of interstate commerce. In so doing, the connection between cause and effect is not strained or tenuous but is plain on its face. Thus, in *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission*, 221 U. S. 612, the Court found it "so plain as to require no elaboration" (p. 619) that the limitation of employment to sixteen consecutive hours on interstate railroads was *directly* connected with the safety of life and property in interstate transportation. So, in *Southern Railway Co.* v. *United States*, 222 U. S. 20, the Court found such a close or direct connection between the Safety Appliance Act, as amended on March 2, 1903 (c. 976, 32 Stat. 942) "as to make it *certain* that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a *real* or *substantial* sense * * * " (p. 26). See also for other authorities on the safety of interstate transportation by railroad, *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1; *Schlemmer* v. *Buffalo, Rochester and Pittsburgh Railway Company*, 205 U. S. 1; *St. Louis, Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281; and *Missouri, Kansas & Texas Railway Co.* v. *United States*, 231 U. S. 112.

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* The Attorney General argued (p. 469) that this Act, abolishing the fellow servant rule "was a natural and logical step from the Safety Appliance Act" and that both acts must stand or fall together. The railroads argued that "Congress has no more power to define the liability of common carriers, engaged in interstate commerce, to their employes, than it has power to legislate on the domestic relations of merchants engaged in interstate commerce." (pp. 479-480, 491)

ployer-employee relations under *any* circumstances. He went on to hold the Act invalid in its entirety, however, for the reason that, not being confined to transactions in interstate commerce, *"it regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce"* (p. 497).

Shortly thereafter, in *Adair* v. *United States,* 208 U. S. 161, Section 10 of the Erdman Act of June 1, 1898 (c. 370, 30 Stat. 424) making it a criminal offense for an interstate carrier or agent thereof to discharge or discriminate against an employee because of his membership in a labor union, was held unconstitutional. It did not "prescribe rules by which such commerce must be governed" (p. 177). Regulations as to safety appliances and, even, the liability of interstate carriers for injuries to their employees in interstate commerce, were distinguished as having *on their face* direct reference to the conduct of interstate commerce. Then it was pertinently said (p. 178):

> "But what possible legal or logical connection is there between an employe's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employe is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of its members as wage-earners—an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such."

The majority of the Court refused to sustain the Act as intended to prevent labor unions from obstructing commerce, saying (pp. 179-180):

> "Will it be said that the provision in question had its origin in the apprehension, on the part of Congress, that, if it did not show more consideration for members of labor organizations than for wage-earners who were not members of such organizations, or if it did not insert in the statute some such provision as the one here in question, members of labor organizations would, by illegal or violent measures, interrupt or impair the freedom of commerce among the States? We will not indulge in any such conjectures, nor make them, in whole or in part, the basis of our decision. We could not do so consistently with the respect due to a co-ordinate department of the Government * * *.
>
> Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as,

in any just sense, a regulation of interstate commerce."*

In the second Employers' Liability Cases (*Mondou* v. *N. Y., N. H. & H. R. Co.*, 223 U. S. 1) the Act of 1908, as amended by the Act of April 5, 1910 (c. 143, 36 Stat. 291), was upheld because it related solely to injuries of railroad employees while actually engaged in interstate commerce. The Court emphasized the fact that railroad employees, engaged in interstate commerce, are themselves instrumentalities of such commerce, saying (p. 47):

> "Among the *instruments and agents* to which the power extends are the railroads over which transportation from one State to another is conducted, the engines and cars by which such transportation is effected, and all who are in any wise engaged in such transportation, whether as common carriers or as their employes.
>
> The duties of common carriers in respect of the safety of their employes, while both are engaged in commerce among the States, and the liability of the former for injuries sustained by the latter, while both are so engaged, have a real or substantial relation to such commerce, and therefore are within the range of this power."

Wilson v. *New*, 243 U. S. 332, is of particular interest because it marks the uttermost limits of congressional power

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* Mr. Justice Holmes dissented on the ground that labor unions are as directly connected with the railroad business as are safety couplers. He was of the opinion that Congress could prescribe complete unionization of railroad employees if it wanted to. If Congress indeed had this power, then the exercise of the power to a more limited extent, that is by preventing discrimination against unions, was not regarded by him as a denial of due process.

over the employment relationship.* There the Adamson Act of September 1916 (c. 436, 39 Stat. 721) was upheld in so far as it provided for a permanent eight hour standard for work of railroad employees engaged in interstate commerce and a temporary standard of wages, during the period of an emergency caused by a threatened nation-wide strike on the part of railroad employees.

Mr. Chief Justice White, writing for the majority, carefully explained why the emergency made it possible, as well as absolutely necessary, to encroach temporarily upon the "primarily private" right (p. 347) of railroads engaged in public business. He said in part, after illustrating the scope of the power to regulate railroads (pp. 349-351):

> "Clear also is it that an obligation rests upon a carrier to carry on its business and that conditions of cost or other obstacles afford no excuse and exempt from no responsibility which arises from a failure to do so and also that government possesses the full regulatory power to compel performance of such duty. * * * What would be the value of the right to a reasonable rate if all movement in interstate commerce could be stopped as a result of a mere dispute between the parties or their failure to exert a primary private right concerning a matter of interstate commerce? Again, what purpose would be subserved by all the regulations established to secure the enjoyment by the public of an efficient and reasonable service, if there was no power in government to prevent all service from being destroyed? * * * And finally, to

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* That this decision represents the border line of the law today, as well as then, has been expressly acknowledged by this Court on many occasions. See, for example, *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 544; *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369.

what derision would it not reduce the proposition that government had power to enforce the duty of operation, if that power did not extend to doing that which was essential to prevent operation from being completely stopped by filling the interregnum created by an absence of a conventional standard of wages because of a dispute on that subject between the employers and employees by a legislative standard binding on employers and employees for such a time as might be deemed by the legislature reasonably adequate to enable normal conditions to come about as the result of agreements as to wages between the parties?"

Could anything be more clear than that the mere circumstance of engaging in interstate commerce, if it be a fact, is not decisive; but that the two all important and decisive considerations are (1) the *affirmative duty* on the part of both employer and employee to render the public reasonable transportation service and (2) the obviously direct connection between the attempted regulation and the performance of that affirmative duty? The answer, if there be need for one, is found in subsequent decisions of this Court.

Thus, the decision of *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, which has been relied on so heavily by the proponents of the National Labor Relations Act,* and even by the Court below (R. 442-444), has no bearing whatever on the power of Congress to enforce collective bargaining or compel the reinstatement of discharged employees in a private busi-

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* See "Memorandum for the National Labor Relations Board," in which the Solicitor General joined in the petition for certiorari herein, at pp. 2, 3, 4, 6, 9, 10.

ness, such as that conducted by The Associated Press. On the contrary, the opinion, as its background, facts and precise language show, deals solely with the power of Congress to set up machinery for mediation or voluntary arbitration as a means of combating disruptions of vital interstate transportation *service* which result from temporary and abnormal maladjustment of the relations between public carriers for hire and their employees, both of whom are under an affirmative duty to furnish the public with reasonable and continuous interstate transportation service.

Congress had provided the machinery for voluntary arbitration of disputes between interstate carriers and their employees several years before the Pullman strike of 1894 and the decision of *In re Debs*, 158 U. S. 564,* which forcibly illustrated to the country the need for some Governmental intervention in order to preserve the very existence, as well as operation, of the necessary instrumentalities of interstate commerce. It was not until after the World War, however, that this Court considered the power of the Federal Govern-

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* Prior to the decision of *In re Debs* the Act of October 1, 1888 (25 Stat. 501) was enacted providing for the creation of "boards of arbitration or commissions for settling controversies and differences between railroad corporations and other common carriers engaged in interstate and Territorial transportation of property or passengers and their employees." The Act applied "whenever differences or controversies arise * * * which differences or controversies may hinder, impede, obstruct, interrupt or affect such transportation of property or passengers" if both parties agree to submit to arbitration, was entirely voluntary. Not only was it necessary for both parties voluntarily to submit the controversy for arbitration, but the only power conferred upon the arbitrators was that they were permitted to file their decision with the Commissioner of Labor "who shall make such decision public as soon as the same shall have been received by him."

No effort was made to prevent the Pullman strike by resorting to the machinery set up by this Act of 1888. After the strike, however, President Cleveland appointed a commission under the Act to investigate its cause. (See "Governmental Protection of Labor's Right to Organize," National Labor Relations Board, Division of Economic Research, Bulletin No. 1 (August, 1936) at pp. 35-6.)

ment to encourage arbitration or mediation of disputes between interstate railroads and their employees.*

The first case involving voluntary arbitration was *Pennsylvania Railroad Company* v. *Labor Board*, 261 U. S. 72, in which Title III of the Transportation Act of 1920 (c. 91, 41 Stat. 456, 469) was construed. In holding that the action of the Board in publishing its decision, not being compulsory, violated no legal or equitable right of the complaining company, the Court said (p. 85):

> *"The statute does not require the Railway Company to recognize or to deal with, or confer with labor unions.* It does not require employees to deal with their employers through their fellow employees. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory cooperation and *leaves it to the two sides to accept or reject the decision.*"

In *Pennsylvania R. R. System, etc.* v. *Pennsylvania R. R. Co.*, 267 U. S. 203, this Court again held that the statute imposed no legal obligation upon the company and that, consequently, the union was not entitled to the injunction therein sought by it. Referring to the obvious efforts of the rail-

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* Although the Erdman Act, of which Section 10 was declared invalid in *Adair* v. *U. S.*, 208 U. S. 161 (pp. 52-54, *supra*), provided for voluntary arbitration, replaced the Railroad Labor Disputes Act of 1888, and was even known as the Labor Disputes Act of 1898, Mr. Justice McKenna was the only member of the Court who considered that the principle of voluntary arbitration was involved in the *Adair Case* (208 U. S. at p. 184). The majority of the Court was of a contrary opinion.

The Erdman Act was replaced by the Newlands Act of 1913 (c. 6, 38 Stat. 103) which in turn gave way to Title III of the Transportation Act of 1920 (c. 91, 41 Stat. 456, 469). All these acts were designed in some way or other to encourage voluntary conciliation, mediation, or arbitration of disputes between interstate railroads and their employees. See also the Adamson Act of 1916, discussed pp. 54-56, *supra*.

road to avoid compliance with the judgment and principles published by the Labor Board, the Court stated (p. 217):

> "All these things it might do and remain within its strict legal rights after it came fully into control of its railroad property subsequent to September 1, 1920."

After the last decision, Congress passed the Railway Labor Act of May 20, 1926 (c. 347, 44 Stat. 577), also providing a plan for amicable adjustment and voluntary arbitration of disputes between common carriers and their employees. In *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, it was held that the Act of 1926, unlike its predecessor, imposed certain definite obligations enforceable by judicial proceedings, the "outstanding feature" being the provision for an enforceable award (p. 564).

Subdivision 3 of Section 2 of the Act provided that "representatives, *for the purposes of this Act* [i.e., for the purposes of voluntary arbitration], shall be designated by the respective parties * * * without interference, influence, or coercion exercised by either party over the self organization or designation of representatives by the other."

This provision was upheld as forming an integral part of the arbitration scheme which Congress had devised in the exercise of its power to "facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation" (p. 570).* The reinstatement of employees discharged during a pending controversy was re-

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* The Act was not attacked as beyond the scope of the commerce power. The only grounds of the railroad's objection were that the Act (p. 558):

> "is unconstitutional because it seeks to take away an inherent and inalienable right in violation of the First and Fifth Amendments of the Federal Constitution; that the granting of the injunction was prohibited by Section 20 of the Clayton Act * * *."

quired, however, not in obedience to any express mandate of the Act, but to purge the railroad of a contempt of the Court's injunction.

The case does not overrule or weaken the *Adair* case. On the contrary, the doctrine of the *Adair* case was recognized by the Court in pointing out that its principle was inapplicable, because the enforcement of voluntary arbitration had nothing to do with the *"normal"* right of an employer to discharge his employees at will.* By "the *normal* exercise of the right of the carrier to select its employees or to discharge them" (p. 571), the Court obviously referred to the discharge or selection of employees (1) when there was no actual dispute, (2) when there was no controversy pending before a mediation board, and (3) when the discharge was not in flagrant disobedience of an injunction properly issued by court of equity.

The decision in *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, referred to the fact that the *Texas* case, as pointed out therein, did not interfere with "normal" rights (p. 369). Furthermore, the Railroad Pension case leaves no doubt about the limited application of the *Texas* case, as well as all cases sustaining the power of Congress to influence or control the relation of employer and employee in any manner. This limited application is conclusively shown, not only by the majority opinion, but also by the dissenting opinion of the Chief Justice.

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* The Chief Justice carefully stated that the principle declared in *Adair* v. *United States*, 208 U. S. 161 and *Coppage* v. *Kansas*, 236 U. S. 1, was inapplicable because (p. 571):

> "The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees *or to discharge them. The statute is not aimed at this right of the employers* but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections [for the purpose of voluntary arbitration], they cannot complain of the statute on constitutional grounds."

In holding that a compulsory pension plan for all employees of interstate railroads, though concededly tending to foster a contented mind on the part of such employees, is not "in any just sense a regulation of interstate transportation," this Court doomed the National Labor Relations Act, whether it embraces all employees or only those engaged in commerce. A contented mind on the part of all railroad employees would of course lead in the long run to fewer strikes or other interruptions of transportation service. Indeed no evidence is necessary to establish this fact, whereas it requires a great amount of evidence, and more than is now available, to establish the fact that the compulsory enforcement of collective bargaining would create sufficient contentment among employees to reduce labor disputes to any substantial decree.* Moreover, compulsory collective bargaining could not, in any event, affect transportation service except where persons engaged in furnishing such service are concerned.

The decision of this Court in the Railway Pension Case stands for the proposition, therefore, that even as to the railroads any compulsory control by Congress of employer-employee relations, no matter what it may be, is void unless it has "* * * *an obvious and direct bearing on the obligations of public service incident to the calling of the*

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* The claim that experience with compulsory collective bargaining demonstrates that it lessens labor disputes and tends to foster content among employees is, at best, an arguable claim, supported by evidence of little or no probative force. (See third paragraph of Section 1 of the National Labor Relations Act; "Governmental Protection of Labor's Right to Organize", National Labor Relations Board, Division of Economic Research, Bulletin No. 1 (August, 1936); and Board's Exhibit 13 (R. 341)). The evidence is not only *ex parte*, prepared by the proponents of the Act with a view to proving a doubtful point, but it is also inadequate. It places slight emphasis on other causes or on intervening causes; it fails utterly to distinguish between different industries, between unorganized and organized workers, or between overreaching employers and those who are more public spirited. Finally, this evidence completely ignores the fact, as the daily newspapers show, that strikes are quite as frequent in organized as in unorganized trades.

railroads" (p. 369). The regulation is too remotely connected with transportation service if it merely relates to the causes of disruptions, such as, for example, the malcontent of the persons rendering the service. To have a direct affect upon interstate commerce the regulation of the employment relation must at least, as was the case with the Railway Labor Act of 1926, " * * * *facilitate the amicable settlement of disputes which threatened the service* of the necessary agencies of interstate transportation [and] tended to prevent interruptions of service * * *" (*Id.*). In other words, the dispute must be actual, not conjectural; the disruption of transportation service must be presently threatened thereby, not remotely possible.

Although the four dissenting Justices disagreed with the necessity of an interruption of service, immediately threatened, they apparently agreed with the proposition that the regulation must relate directly to the adequacy of transportation service to the public. For, as the Chief Justice said, in writing the dissenting opinion (p. 376):

> "And the exercise of the [commerce] power, thus broadly defined, has had the *widest range in dealing with railroads,* which are engaged as common carriers in interstate transportation. As their service is vital to the nation, nothing which has a real or substantial relation to the suitable maintenance of that service, or to the discharge of the responsibilities which inhere in it, can be regarded as beyond the power of regulation."

C. *The "strike" or anti-trust cases.*

Without exception, the cases, considered thus far, consistently show that Congress may only regulate labor relations, or employer-employee relations, where such regu-

lation has a direct bearing upon the *service* rendered to the public by the public agencies or instrumentalities of interstate commerce.

All of the strike cases, following the second *Coronado* case (*Coronado Coal Co.* v. *United Mine Workers*), 268 U. S. 295, related exclusively to the removal of existing, intentional obstructions to interstate commerce; the injunctions were not granted except where the actual intent or purpose of the strikers was to prevent the flow of goods across state lines.* The same is true as to the regulation of any combination or conspiracy under the anti-trust laws. For this reason the strike cases do not properly fall into the category of regulations of the employer-employee relationship, but relate solely to the removal of actual and existing obstructions to interstate commerce in the form of a combination or conspiracy in restraint of trade.

As in the "flow" of commerce cases, heretofore discussed, it should be noted that the "strike" cases involve a regulation of A in order to keep him from obstructing B or depriving him of the facilities to which he is entitled. There is no indication whatever in them that an employer may be regulated to keep him from obstructing himself. On the contrary, an employer in private business is as free to discontinue interstate commerce as he is to continue. This right, it would seem, is protected by the due process clause of the Fifth Amendment as well as by the commerce clause.

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* See *In re Debs*, 158 U. S. 564; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *United Leather Workers* v. *Herkert and Meisel Trunk Co.*, 265 U. S. 457, 471; *Industrial Association* v. *United States*, 268 U. S. 64, 82; *Bedford Cut Stone Co.* v. *Stone Cutters Ass'n*, 274 U. S. 37, 46-47; *Duplex Co.* v. *Deering*, 254 U. S. 443; *Levering & Garrigues Co.* v. *Morrin*, 289 U. S. 103, 107; *Schechter Corp.* v. *United States*, 295 U. S. 495, 547.

POINT III.

The Act violates the Fifth Amendment and is void because its terms are arbitrary, unreasonable and capricious, having no real and substantial relation to the accomplishment of legitimate ends.

On the question of due process, the end alone can not justify the means. The power may be admitted, the end may be assumed to be presently popular, ultimately desirable, and even legitimate both as to scope and as to subject matter, and yet the means, if arbitrary, must be held invalid. Thus, even if we assume, *arguendo,* that the end sought by the National Labor Relations Act is not the improvement of labor conditions in industry, but, as declared therein, is that of promoting and preserving the continuity of interstate commerce, and even if we likewise assume that such an end is within the competency of Congress, nevertheless, if the means adopted are "unreasonable, arbitrary or capricious," having no real and substantial relation to this declared object, they cannot be legally enforced. This is unquestionably the mandate of the Fifth Amendment.*

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* This dual test of the legitimacy of the end and the reasonableness of the means is applicable wherever the protection of the due process clause of the Fifth or Fourteenth Amendment is invoked. Thus in *Chicago, Burlington & Quincy Railway* v. *Drainage Commissioners*, 200 U. S. 561, 593, the Court says:

> "If the means employed have no real, substantial relation to public objects which government may legally accomplish; if they are arbitrary and unreasonable, beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt."

Other, more recent, expressions are in *Railroad Retirement Board* v. *Alton R. R. Co.*, 295 U. S. 330, 347; *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 311; *Nebbia* v. *New York*, 291 U. S. 502, 525. See also the dissenting opinion of Mr. Chief Justice Hughes in *Morehead* v. *Tipaldo* (New York Minimum Wage Law), 298 U. S. 587, 631, where he said that the due process clause had not been violated because "The end is legitimate and the means appropriate."

As the Court said in *Nebbia* v. *New York*, 291 U. S. 502, at page 525:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the *admitted* power, by securing that the end shall be accomplished by *methods* consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

It will be contended no doubt by the Board that the reasonableness of the entire Act is not involved in this case; that the only justiciable issue here presented is the naked one, whether The Associated Press can be compelled to reemploy and make reparation to Morris Watson for having discharged him allegedly in violation of Sections 8(1) and 8(3).

It is solely by resorting to the entire scheme of the Act, however, that the purported function of Sections 8(1) and 8(3) becomes apparent. One then perceives that the order, made pursuant to subdivisions (1) and (3) of Section 8, is but a cog in the machinery designed by the Act for using the compulsory process of government to force dissenters to swallow a drastic concept of the so-called rights of employees broadly proclaimed in Section 7 of the Act.

The order of the Board thus brings the entire Act into view. The most that can be argued by the Board is that the discharge of Morris Watson by The Associated Press was unlawful because Watson was a prominent member of a labor organization, claiming to be the exclusive representative, for the purpose of compulsory collective bargaining, of all the editorial employees in the New York office of The Associated Press.* And if the Board has any power whatsoever to compel The Associated Press to reinstate Watson with the payment of lost wages, that power must be bottomed, of necessity, upon the greater power of compelling The Associated Press to accept, and not interfere with, that self-organization and collective bargaining on the part of its editorial employees, which the Act prescribes.

Nor can "self-organization" be segregated from "collective bargaining," for it is indeed an empty phrase unless it includes collective bargaining. These terms, moreover, though not precisely synonymous, are used interchangeably and conjunctively throughout the Act as indispensable adjuncts to "collective action." And, as will be subsequently shown, the legislative scheme for protecting both leads inevitably to the closed union shop.

The Act recognizes but one type of representative for the purpose of collective bargaining, namely, the independent labor organization, completely free from employer domination, interference, or any form of support (Section 8 (2)).

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* If it can be said that the record reveals any discrimination at all against Watson in discharging him, it must be on the theory that his discharge was due to his demands for collective bargaining, rather than his membership in the American Newspaper Guild. He had been associated with the Guild for two years prior to his discharge with the knowledge of his employer (R. 194-199, 249). Indeed, the only possible argument that the discharge was discriminatory in any way must be based entirely upon the circumstantial fact that Watson was discharged the day after a letter demanding collective bargaining had been sent to The Associated Press (R. 230, 233-234).

The Company union and the closed non-union shop are thus unconditionally outlawed, while the closed union shop is expressly permitted (Section 8 (3)). The right of employees to self-organization necessarily imports the right of the employee to bargain collectively through the independent labor organization which is formed.* Compelling the employer to permit and not interfere, even by active support, with the self-organization of his employees, likewise coerces him to accept the independent labor organization as the representative of his employees. True, the Act does not in terms impose the closed union shop on the unwilling employer. But as the Court pointed out in *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 248, unionizing the workers is but the first step toward the closed shop "followed by the latter almost as a matter of course." And, as the Court went on to say,

> "Plaintiff [the employer] *is as much entitled to prevent the first step as the second,* so far as its own employees are concerned, and to be protected against irreparable injury resulting from either." (*Id.*)

Accordingly, the order of the National Labor Relations Board directing The Associated Press to reinstate Morris Watson, with back pay, cannot be enforced unless (1) that self-organization and that collective bargaining, which the Act seeks to promote, may be properly forced upon an unwilling employer and his non-consenting employees by governmental fiat, and (2) not even then, unless the methods of enforcement, including the order to reinstate Watson are reasonable, necessary, and not arbitrary.

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* Indeed, the charter of the American Newspaper Guild provides that the Guild is the exclusive representative of its members (R. 353).

1. The enforcement by statutory compulsion of the collective action which the Act prescribes is an arbitrary encroachment upon the constitutional rights of the unwilling employer and his non-consenting employees.

A. *Exceptional circumstances being absent, the statutory compulsion is arbitrary per se.*

There are rights which have no material or numerical measure. Such rights, perhaps the most notable of all being freedom of contract, are generally immune, in a free country, at least, from any governmental inference, limitation, or disturbance. Thus it is well settled that, although there is no absolute liberty to do as one wills, freedom of contract is the rule and restraint the exception; that in the absence of exceptional circumstances, the power of the individual to bargain, when exercised freely and openly by employer and employee in private business, may not be disturbed or limited by the exercise of force. *Morehead* v. *New York ex rel Tipaldo,* 298 U. S. 587, 610-611; *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522, 534; *Adkins* v. *Children's Hospital,* 261 U. S. 525, 545-546; *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 250-251, 253; *Wilson* v. *New,* 243 U. S. 332, 347, 386; *Coppage* v. *Kansas,* 236 U. S. 1, 16-21; *Adair* v. *United States,* 208 U. S. 161, 172-176; *Allgeyer* v. *Louisiana,* 165 U. S. 578, 589-590; *Butchers' Union Co.* v. *Crescent City Co.,* 111 U. S. 746, 762, 764-765.

Those exceptional circumstances which might justify an encroachment upon freedom of contract are, of course, varied. Broadly speaking, however, regulation of the right to contract in respect of a private business, is arbitrary and therefore void unless confined to the exigencies of a real emergency (*Wilson* v. *New,* 243 U. S. 332; *Block* v. *Hirsh,* 256 U. S. 135; *Highland* v. *Russell Car & Snow Plow Co.,* 279

U. S. 253); or to the relief of some unusual or extraordinary distress or physical danger, limited to peculiar circumstances (*Nebbia* v. *New York*, 291 U. S. 502; *Bunting* v. *Oregon*, 243 U. S. 426; *Muller* v. *Oregon*, 208 U. S. 412; *Holden* v. *Hardy*, 169 U. S. 366); or to the prevention of fraudulent or unfair practices (*Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *McLean* v. *Arkansas*, 211 U. S. 539; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Petersen Baking Co.* v. *Bryan*, 290 U. S. 570; *Armour & Co.* v. *North Dakota*, 240 U. S. 510; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539. See also *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corporation; Pep Boys, Manny, Moe & Jack of California* v. *Pyroil Sales Company, Inc.*, both decided December 7, 1936, in support of the fair trade acts of Illinois and California, respectively).

As there can be no fixed category of exceptional circumstances, so there is no fixed category of contracts or businesses which, by their very nature, involve a surrender of personal liberty in the interest of public service.* Such businesses, long described as "affected with a public interest," generally involve some element of monopoly. Due to circumstances peculiar to each, private freedom has succumbed to the public interest. See, for example, *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548; *Chicago, Burlington and Quincy Railroad Company* v. *McGuire*, 219 U. S. 549; *Wilson* v. *New*, 243 U. S. 332; *German Alliance Insurance Co.* v. *Kansas*, 233 U. S. 389; *O'Gorman & Young* v. *Hartford Insurance Co.*, 282 U. S. 251; *Tagg Bros. and Moorhead* v. *United States*, 280 U. S. 420; *Munn* v. *Illinois*, 94 U. S. 113, and similar cases.

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* On occasion the exceptional circumstance may be found in the contract itself. For example, seamen's contracts of employment are regarded as exceptional in that, by their very nature they require a surrender of personal liberty for the life of the contract. See *Robertson* v. *Baldwin*, 165 U. S. 275; *Patterson* v. *Bark Eudora*, 190 U. S. 169.

That there is no clear line of demarcation between circumstances which are exceptional and those which are not, or between that business which is private and that which is public, is wholly irrelevant here. It is sufficient that *all* industrial or commercial employment is not exceptional and that *all* business is not public. The Act, in enforcing Section 7, does not even pretend to establish or follow a distinction between public and private business, between public and private employment, or, even, between ordinary and exceptional circumstances of employment. The Act, as previously observed, is addressed to all employment in industrial and commercial enterprises; it embraces, indiscriminately, the small independent employer as well as the large organized employer, the charitably inclined, as well as the over-reaching employer. It is not restricted to any unusual contracts of employment or any particular abuse of employment. Nor is a temporary emergency asserted or relied upon as the occasion for the exercise of extraordinary power; no immediately threatened disruption of the continuity of business in a particular situation is made a condition precedent to the application of Section 8 of the Act. On the contrary, the Act declares and pursues a permanent policy of drastically enforcing the rights proclaimed in Section 7 by outlawing all private and individual bargaining in respect of private employment in private industry.

The need (if need there be) for government protection of collective action on the part of employees is not in itself an exceptional circumstance which will justify an invasion of the normal right to property and liberty of contract. This was squarely decided in *Adair* v. *United States,* 208 U. S. 161. In holding that Congress could not, consistently with the Fifth Amendment, make it a criminal offence for an employer to discharge an employee because of his membership in a

labor organization, the Court in that case proclaimed (pp. 174-175):

"While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employé to quit the service of the employer, *for whatever reason*, is the same as the right of the employer, *for whatever reason*, to dispense with the services of such employé. It was the *legal right* of the defendant, Adair,—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so,—however unwise such a course on his part might have been,—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employé have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

The Court, after citing a number of cases in accord with the general holding expressed above, then said (p. 176):

> "And the defendant was at liberty, in his discretion, to discharge Coppage from service without giving any reason for so doing."

The *Adair* case is not only precisely in point, but its authority has never been questioned by this Court. On the contrary, when a similar situation under State law arose in *Coppage* v. *Kansas*, 236 U. S. 1, the doctrine of the *Adair* case was reaffirmed and held indistinguishable, although the broad police power of the State was invoked, and although the legality of a "yellow dog" contract, rather than discharge, was the immediate question presented. In following the *Adair* case, the Court elaborated at some length on liberty of contract between employer and employee, saying in part (pp. 17-18):

> "And, since it is self-evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights. * * *
>
> And since a state may not strike them down directly, it is clear that it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view. The police power is

> broad, and not easily defined, but it cannot be given the wide scope that is here asserted for it, without in effect nullifying the constitutional guaranty."

The Court went on to say (p. 19):

> "* * * Conceding the full right of the individual to join the union, he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man, any more than the same individual has a right to join the union without the consent of that organization."

Again, in *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, the Court held that, as a working man is free to join the union, so the employer is free (regardless of the wisdom or justice of his action) to employ those only who have no union affiliations. Upholding the right of the employer to maintain a closed non-union shop without interference from outside sources, the Court declared (p. 253):

> "* * * It is a sufficient answer, in law, to repeat that plaintiff had a *legal and constitutional* right to exclude union men from its employ."

Even where preservation of the continuous operation of a business, declared to be affected with a public interest, demands the exercise of statutory compulsion in labor relations, such compulsion is invalid. It is not within the functions of government to compel employer and employee to submit differences between them to arbitration and abide by the award resulting therefrom. Nor is it material whether the dispute be one as to wages (*Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522) or one as to hours (*Wolff Packing Co.* v. *Industrial Court,* 267 U. S. 552).

In holding invalid the regulation of wages by compulsory arbitration even though continuity in an essential business would concededly result therefrom, Mr. Chief Justice Taft, speaking for a unanimous Court in the first *Wolff* case, said (262 U. S. at p. 543):

> "The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct and is assumed when the business is entered upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that if operation is impossible without continuous loss, *Brooks-Scanlon Co.* v. *Railroad Commission*, 251 U. S. 396; *Bullock* v. *Railroad Commission*, 254 U. S. 513, it may give up its franchise and enterprise, but short of this, it must continue. Not so the owner when by mere changed conditions his business becomes clothed with a public interest. He may stop at will whether the business be losing or profitable."

And, as Mr. Justice Van Devanter stated in writing the subsequent decision of the unanimous Court to the effect that compulsory arbitration as to hours of labor was equally invalid (267 U. S. at p. 569):

> "The authority which the Act gives respecting the fixing of hours of labor is merely a feature of the system of compulsory arbitration and has no separate purpose. It was exerted by the state agency as a part of that system and the state court sustained its exertion as such. As a part of the system it shares the invalidity of the whole."

Thus this Court has squarely held, on more than one occasion, that the protection of labor's right to collective action (*Adair, Coppage and Hitchman* cases) and the preservation of the continuous operation of essential businesses (*Wolff* cases) do not justify governmental interference with the voluntary character of the relation and contract between employer and employee. Such interference, it would seem, is an arbitrary and unreasonable method of preventing strikes or other labor disputes, although limited to particular situations where the need of forceful intervention was found to be more than ordinary. That the National Labor Relations Act is arbitrary and invalid in so far as it attempts to subjugate private contract and property rights to the rights of collective action, set forth in Section 7, should require no further demonstration.

The confusion between compulsory collective bargaining and voluntary arbitration is deliberately fostered by the proponents of the National Labor Relations Act, but, on analysis, it reveals how hopelessly contradictory the evidence in favor of collective bargaining is.* Thus it is declared in Section 1 of the Act and frequently has been asserted that "Experience has

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* In Bulletin No. 1 of the National Labor Relations Board, Division of Economic Research (August 1936), entitled "Governmental Protection of Labor's Right to Organize", it is stated in regard to the 1934 amendments to the Railway Labor Act at p. 50:

> "By these amendments the United States Board of Mediation, which consisted of five members, was abolished, and the present National Mediation Board of three created (R. 169).
>
> The *latter* has *some* duties very similar to those of the National Labor Relations Board. It settles disputes between employees regarding representation for the purpose of collective bargaining, and, when requested to do so, conducts elections and certifies to the employer the names of the duly designated representatives. * * *
>
> Disputes over the designation of employee representatives could be handled by the *old* United States Mediation Board, only by *agreement of the parties*. In the 6 years of the Board's existence there were but nine instances in which the employers consented to the determina-

proved that *protection by law* of the right of employees to organize and bargain collectively safeguards commerce * * *." Experience has proved no such thing. Except, possibly, during the war time regimentation of industry, there had been no experience in this country with government protected (i. e.,—compulsory) collective bargaining prior to 1933.* Up

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tion of employee representatives by an election conducted by the Board. *To avoid the strikes threatened by the resulting dissatisfaction*, the 1934 amendments included a provision empowering the new Board to investigate all such disputes, and to determine the choice of the majority of the employees."

The above statement is indeed strange in view of the Board's position, taken throughout the bulletin, that experience with collective bargaining under the Act of 1926 conclusively demonstrates that governmental enforcement of collective bargaining prevents strikes. Thus, for example, see the following excerpts from page 26 of the bulletin:

> "Q. * * * Now, Dr. Leiserson, in terms of the actual experience upon the railways since 1926, * * * has actual experience demonstrated that the protection of this right (to organize and bargain collectively) by congressional action in the 1926 Railway Labor Act made collective action on the railways an instrument of peace rather than strife?
>
> "A. There is no question about that, and the carriers as well as the employees would so testify. There is no question that the experience since 1926, and since the amended act of 1934, bears out the purpose that Congress had in mind of maintaining peace through these methods of promoting good will, I should say" (R. 208-209).

The only conclusion to be drawn from excerpts such as these is that the Board's Bulletin No. 1 adds nothing to the "findings" of the preamble (Section 1), but merely illustrates how questionable and unfounded in fact the broad conclusions of Congress happen to be.

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* The history of federal labor legislation up to and including the Railway Labor Act of 1926 has already been discussed at some length, pages 50-62. None of these acts, except possibly the Erdman Act, which was declared invalid in *Adair* v. *United States*, 208 U. S. 161 (pp. 52-54, *supra*), involved compulsory unionization or collective bargaining. The first attempt, aside from the Erdman Act, at permanent federal statutory enforcement of collective bargaining and unionization of employees, appears in the 1934 amendments to the Railway Labor Act (48 Stat. 1186). The Norris-LaGuardia Anti-Injunction Act (47 Stat. 70) merely recognises voluntary collective bargaining and self-organization of employees; but does not purport to enforce them. Since the "New Deal", compulsory collective bargaining and unionization of employees, has been provided for in a number of statutes. See, for example, the National Industrial Recovery Act (48 Stat. 195, 198) and the Guffey Coal Conservation Act (49 Stat. 991, 1001). But, it is submitted, this sponsorship of compulsory collective bargaining within the last four years does not prove that it has been tested by experience or that it is constitutional.

to that time, our experience had been confined to (1) government protected voluntary arbitration of labor disputes between interstate railroads and their employees, and (2) voluntary collective bargaining and self-organization without government protection in certain specialized industries.

The Associated Press readily concedes that the results of voluntary arbitration and voluntary collective action in certain industries may have had beneficial results. Certainly there is no need here for questioning the results or for impeaching the evidence on this point because it is wholly irrelevant. For, as the Court wisely observed in *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 250:

> "Whatever may be the advantages of 'collective bargaining,' *it is not bargaining at all, in any just sense, unless it is voluntary on both sides.*"

B. *The particular collective action which the Act seeks to impose is arbitrary, unreasonable and unduly restrictive of constitutional rights.*

As we have seen, the mere enforcement of collective action by compulsion, exceptional circumstances being absent, constitutes, in itself, an arbitrary encroachment upon important constitutional rights. The Act even goes beyond the compulsory enforcement of collective action in general in that it is designed to compel the universal acceptance, by both employer and employee, of a rigid and hitherto unaccepted conception of collective action which, carried to its logical conclusion, completely destroys the rights of the employer and his non-consenting employees. Instead of seeking a reasonable balance between employer rights and the rights of individual employees on the one hand, and the collective rights of employees on the other, the Act fosters the domination of all

industry by labor unions. This domination is sought, irrespective of harsh, one-sided, and discriminatory results, as the one and only method of adjusting inequality of bargaining between employer and employee. That such an arbitrary program has been adopted by the Act would seem to be apparent from no more than a cursory consideration of the provisions of Sections 8 and 9 of the Act.

Section 8, it will be remembered, lists the "unfair labor practices" of the "*employer.*" Subdivision (1) contains the general, catch-all prohibition declaring it to "be an unfair labor practice for an *employer*—(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 7." It is to be noted that no one but the employer is enjoined from engaging in this sweeping definition of an unfair labor practice. Any outsiders, including labor unions, are free "to interfere with, restrain, or coerce employees" in the exercise of their collective rights. This and other practices on the part of the employees themselves, the labor organizations, and the officials of such organizations, are either ignored completely or sanctioned by silence. Indeed, as hereafter shown, the subsequent, more specific provisions, of the Act expressly permit specialized forms of coercion and discrimination against employees such as the "closed shop."

(a) *The Closed Union Shop*

The Act deliberately and openly fosters the closed union shop. This is done first, by generally prohibiting the employer from taking any action against the unionization of his employees by an outside labor union (Section 8 (1)); second, by preventing the employer from establishing a "company union" or otherwise aiding, advising, supporting, or cooperating with his employees in the collective action taken by them (Section 8 (2)); third, by preventing any discrimination against employees by reason of their affiliations with

an outside union (Section 8 (3)); fourth, by expressly permitting discrimination against employees in accordance with a closed union shop agreement (Section 8 (3)); fifth, by providing that the only appropriate unit for the purpose of collective bargaining shall be that determined by the Board (Section 9 (b)); sixth, by providing that the representatives selected by the majority of the employees in that one unit shall be the exclusive representatives for the entire unit; and seventh, by compelling the employer to "bargain" with the representative for the entire unit as thus selected (Section 8 (5)). These various requirements and prohibitions, as will be shown, not only lead inevitably to the closed union shop but they are also arbitrary in themselves.

(b) *Outlawing the Company Union*

Subdivision (2) of Section 8 of the Act makes it unlawful for the *employer* "To dominate or interfere with the formation or administration of *any* labor organization or contribute financial *or other support* to it: *Provided,* That *subject to rules and regulations made and published by the Board* pursuant to Section 6 (a), an employer shall not be prohibited from *permitting employees to confer with him* during working hours without loss of time or pay."

Thereby the "company union" or any other employer-employee cooperation is outlawed. Antagonism between the employer and his employee, between capital and labor, is outrightly encouraged. The unreasoning sweep of the prohibition in Section 8 (2) is merely emphasized by the proviso that the employer may *confer* with his employees during working hours "subject to rules and regulations made and published by the Board," but not otherwise.

That employers may be supposed in extreme and exceptional cases to have encouraged company unions as a means of

domineering over their employees and preventing outsiders from intervening in aid of the employees is not, it would seem, sufficient reason for outlawing the company union *in toto*, much less for prohibiting an employer from conferring with his employee except in accordance with rules and regulations. Irrespective of whether or not the company union is inherently evil, it would seem on principle alone that no law could remain reasonable and at the same time deprive both employer and employee of the advantages of friendship, mutual loyalty and wise cooperation.

(c) *The Preferred Status of Union Employees*

Subdivision (3) of Section 8 deprives the *employer* of the right "by discrimination in regard to *hire* or *tenure* of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *." Thus the Act reenacts those very restrictions upon the employer which were declared arbitrary and invalid in the *Adair* and *Coppage* cases. The prohibition here, moreover, extends to *tenure* of employment as well as to any discrimination in hire, discharge, or employment contracts. Accordingly, an employer must always find reasons which would safely withstand the scrutiny of the Board before he even went so far as to demote, reduce the salary, or even change the routine employment of a union man. By the same token, it would seem that he must carefully examine his conscience and his records before he promotes or encourages a non-union man. These provisions against discrimination contained in Section 8 (3) virtually place union members in a status secure against discharge or demotion however deserved. See *H. B. Rosenthal-Ettlinger Co.* v. *Schlossberg*, 266 N. Y. Supp. 762 (Sup. Ct. N. Y. 1933).

(d) *Express Sanction of Discriminatory Closed Union Shop Agreements*

Although Section 8 (1) of the Act purports to prevent the employer from interfering in any way with the rights of employees, the proviso in Section 8 (3) expressly permits this discrimination if it is carried out in accordance with the closed union shop agreement. Section 8 (3), after proscribing any discrimination against union members, goes on to say: "*Provided,* That *nothing in this Act,* or in the National Industrial Recovery Act (U. S. C., Supp. VII, Title 15, Secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, *shall preclude an employer from making an agreement with a labor organization* (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) *to require as a condition of employment membership therein,* if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made."

Thus, discrimination against collective action, self-organization, as well as the individual rights, of the minority employees is expressly permitted by the employer if he has the consent of a labor union representing the majority employees. The employer may cooperate with one outside labor union in discriminating against another labor union, equally independent. Likewise the representative of the employees, determined in accordance with the provisions of Section 9, may discriminate against any employer unit, craft unit, plant unit or any subdivision thereof or against any individual employee. The closed union shop which the Act openly encourages is, by its very nature, discrimination against individual employees and minority units of employees.

Nor is the discrimination lessened in any way by the fact that subdivision (3) of the section does not in terms impose the closed shop upon the employer without his consent. It is common knowledge that the dominant union will almost inevitably seek to compel the employer to enter into a closed shop agreement. This, it would seem, is primarily a matter of time. That is to say, the Act, instead of directly compelling the unwilling employer to accept the closed shop, leaves the manner of compulsion entirely to the discretion of the dominant union. It should be remembered that the Act expressly sanctions, the right to strike and, indeed, prevents any interference with it "in any way." (Section 13).

(e) *The Arbitrary Restrictions Upon Collective Bargaining Units and Representatives*

The Act does not permit freedom in collective bargaining by employees. On the contrary, collective bargaining is prohibited except upon rigid conditions which are both restrictive and discriminatory. We have already seen that the "company union" or any other unit which is subject to employer advice, influence, or support, has been outlawed by the Act (Section 8 (2)). It is not, therefore, a proper unit or representative for the purpose of collective bargaining. Furthermore, the individual employee is prevented from independently selecting the bargaining unit to which he desires to belong and, even, from choosing his representative for the purpose of collective bargaining. There can be but one recognized bargaining unit and that unit may have only one representative. The individual employee can have little, if any, influence in selecting either. The employer can have no influence whatever.

The only permissible bargaining unit is the one selected as appropriate by the Board, whether it be "the employer unit,

craft unit, plant unit, or subdivision thereof" (Section 9 (b)). The Board's discretion in making this selection is virtually unlimited, for it need only be made "in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act" (Section 9 (b)). *"Implicit* in the power to determine the unit appropriate for the purposes of collective bargaining *is the power to gerrymander and thereby to aggrandize or crush a labor organization."* See *Bendix Products Corporation* v. *Beman,* (N. D. Ill. 1936) 14 F. Supp. 58, 66. The employer and the individual employees are utterly helpless except insofar as they are able to influence the Board in the exercise of its unlimited power of discrimination.

The selection of the unit appropriate for the purposes of collective bargaining is, however, of the utmost concern to both employee and employer, particularly because there can be but one, *"exclusive,"* representative for the entire unit. Section 9 (a) provides that *"representatives* designated or selected for the purposes of collective bargaining by the *majority* of the employees in a unit appropriate for such purposes, shall be the *exclusive representatives of all the employees in such unit* for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Obviously the minority employees in a unit selected by the Board are completely deprived of their right to contract with their employer either individually or through representatives of their own choosing. Conversely, the employer is stripped of any right to contract with the minority employees within the unit. True, there is an express proviso in Section 9(a) "that any individual employee or a group of employees shall have the right at any time *to present grievances* to their employer." This tenuous right of peti-

tion, however, is all he has left * and it is hardly an adequate substitute for the right of property and freedom of contract which has been taken from him. Nor can the employer find, in the privilege of hearing the grievances of his employees, adequate compensation for his former right of contracting and bargaining with them in respect of all matters pertaining to their employment.

Furthermore, the minority in the designated unit is not only deprived of the power to contract with their employer, either individually or through representatives of their own choosing, but they are also *bound by the terms of any agreement which the employer makes with the representatives of the majority.*

As to the reasonableness of such a requirement this Court said, but recently, in *Carter* v. *Carter Coal Company,* 298 U. S., 238, 311:

> "The power [to fix hours and wages] conferred upon the majority [of producers and of miners] is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business * * *.
>
> And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this

* The proviso, or exception from the power, marks, according to the well settled rules of construction, the limits of the power itself. *Gibbons* v. *Ogden,* 9 Wheat. 1, 191.

court which foreclose the question. *Schechter Corp.* v. *United States*, 295 U. S. at p. 537; *Eubank* v. *Richmond*, 226 U. S. 137, 143; *Washington ex rel. Seattle Trust Co.* v. *Roberge*, 278 U. S. 116, 121-122."

The deprivation of constitutional rights effected by this Act is even more intolerable and unconstitutional than the deprivation resulting from the collective bargaining provisions of the Guffey Act, for under this Act it is possible, either by gerrymandering of bargaining units, or by rulings on elections, *to subject the majority employees to the will of the minority.*

It is manifest that a majority of the employees of a given employer might easily be deprived of any right to representation should the Board reject the employer unit and establish another unit or units, dominated by other groups or other interests, as the only proper units. By the same token the majority of employees in a craft or plant or subdivision thereof might be deprived of their right to bargain. The Board has openly followed the policy of always favoring the unit which is supported by an independent labor organization.*

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* See Comment on decisions of National Labor Relations Board for its first year, 4 University of Chicago Law Review, 97 (December, 1936), where it states at pp. 102-103:

"In its determinations of appropriate bargaining units the Board has tacitly given prime consideration to the rules of the interested existing bona fide labor organizations governing eligibility to membership as to tasks performed. Wherever there has been a conflict between a bona fide labor organization and an employer, or between a bona fide labor organization and a labor organization which the Board suspects of being a company union, *the Board has always decided in favor of the bargaining unit supported by the bona fide labor organization.* In cases of conflict between two bona fide labor organizations both of which form a part of the American Federation of Labor, the Board has declined to pass on the question of a bargaining unit, saying that the two unions should have recourse to their parent organization for a decision on the conflict of jurisdiction (*In re Aluminum Co. of America*, R. 4, Dec. 41; *In re Axton-Fisher Tobacco Co.*, R. 5, Dec. 48; *In re Standard Oil Co. of California*, XXI. R. 3, Dec. 49). A more difficult problem which may present itself in connection with the drive for industrial unions would require the Board to choose between the industrial form of organization and the craft form, without being able to send the problem back to a common parent organization for decision."

The majority may similarly be deprived of its right to bargain where the Board designates as the proper representative for the unit the representative selected pursuant to secret ballot in which all the employees did not vote. Indeed, in a related case the Board designated the American Newspaper Guild as the exclusive representative of all editorial employees in the New York office for the purpose of collective bargaining.* Thus the majority of the editorial employees of the Associated Press, in its New York office, are without representatives for the purpose of collective bargaining and yet The Associated Press is under statutory compulsion to "bargain" with the American Newspaper Guild as the exclusive representative for that unit.

(f) *Compulsory Unilateral Bargaining*

Section 8 (5) of the Act provides that it is an unfair labor practice for the employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)." The Board has interpreted this as imposing upon the employer an affirmative duty to bargain and negotiate with the exclusive representatives of the unit which it prescribes. The employer need not, it is true, accept unreasonable proposals made by the representatives but he must at least submit counter-proposals and be prepared to give an adequate reason for his refusal. The Board, of

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* Pursuant to Section 9(c) of the Act the Board took a secret ballot of the editorial employees in the New York office of the Associated Press. All the editorial employees did not vote but a majority did. Of this majority which voted, a majority (being a minority of the whole) chose the American Newspaper Guild as its representative for the purposes of collective bargaining. The Board accordingly decided, citing *Virginia Ry. Co.* v. *System Federation No. 40*, 84 F. (2d) 641 (C. C. A. 4th, 1936), that the American Newspaper Guild was the exclusive representative of all the editorial employees in the New York office of the Associated Press. See Decision No. 58 of the Board in Case No. R. 26 (July 3, 1936).

course, is the final arbiter as to whether the refusal is reasonable or unreasonable.* Thus, when a labor organization, such as the American Newspaper Guild, demands a closed shop, the employer may not flatly refuse; but must seek to reach an agreement with the union.** And, in the final analysis, it is left to the Board to determine for the employer whether or not the closed shop demand of the union is to be accepted.

The Board may not determine, however, that the *union* must accept a reasonable offer or that it shall be bound, should it ever reach an agreement with the employer. Mutuality of contract is totally lacking in that the employer, who is the only party under an obligation to "bargain", is likewise the sole party bound by an agreement. The employees are not bound by force of any provision in the Act (which specifically preserves the right to strike); nor are they bound as a matter of contract, since they may refuse to work from the instant a "bargain" is reached. Thus, the Act imposes upon the

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* The Board has already rendered a number of decisions to the effect that the employer must do everything within reason to reach an agreement with the collective bargaining representatives. See *In re Timken Silent Automatic Co.*, C. 10, Decision No. 25; *In re Canton Enameling & Stamping Co.*, C. 47, Dec. 31; *In re Edward E. Cox, Printer*, C. 37, Dec. 45; *In re Sands Mfg. Co.*, C. 33, Dec. 46; *In re Jeffrey-Dewitt Insulator Co.*, C. 21, Dec. 50; *In re Consumers' Research, Inc.*, C. 52, Dec. 85; *In re International Filter Co.*, C. 56 and R. 21, Dec. 40; *In re Alaska Juneau Co.*, C. 91, Dec. 94. These decisions are now collected in Commerce Clearing House, Labor Law Service, pp. 15,401 *et seq.* and in Prentice-Hall, Inc., Labor and Unemployment Insurance Service, pars. 14,601 *et seq.*

In this regard it is interesting to note that the Trial Examiner in his intermediate report recommended that The Associated Press be compelled, in the negative, to "cease and desist from refusing to bargain collectively with the American Newspaper Guild" and, in the affirmative, to "bargain collectively with its editorial employees through the American Newspaper Guild and its National Executive Board, duly chosen representative of the Associated Press unit of such Guild," and, finally, that the Associated Press "file with the Labor Board for the Second Region a report in writing *setting forth in detail* the *manner* and *form* in which it has *complied* with the foregoing requirements" (R. 44-45).

** See *In re International Filter Co.*, C. 56, R. 21, Dec. 40; *In re Alaska Juneau Co.*, C. 91, Dec. 94, for decisions of the Board holding that the employer must even "bargain" in regard to a demand for the closed shop.

employer strict affirmative duties without reciprocal advantage. If the public has a legitimate interest in requiring the employer to bargain with the representatives of his employees, it would seem that it has an equally legitimate interest in requiring the representatives to bargain with the employer and to be bound by any contract agreed upon. It is submitted that whatever may be the merits or demerits of compulsory unionization and compulsory collective bargaining, they can never be accomplished within reason unless employer, employee and employee representatives are all placed under mutual obligation.

The "collective bargain" which the Act commands is nothing more than "compulsory unilateral arbitration." See *Bendix Products Corp* v. *Beman,* 14 F. Supp. 58 (N. D. Ill. 1936). The employer is, in effect, compelled to arbitrate any dispute with the representative of his employees and abide by the award. The employees and their representatives are under no obligation whatever to bargain, arbitrate or abide by the terms of an award. This "compulsory unilateral arbitration" is, therefore, much more arbitrary than the compulsory mutual arbitration unanimously declared invalid in *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522 and 267 U. S. 552.

(g) *Recapitulation*

It would seem to be fully demonstrated that the Act does not seek to protect collective bargaining and collective action on the part of employees but that it unquestionably attempts to place all labor relations in an iron vise by reducing employment to a closed union shop basis. This is shown not only by express sanction of closed union shop agreements (Section 8 (3)) but by the requirement that the employer must bargain (Section 8 (5)) with the representatives of the unit selected

by the Board (Section 9 (b)), who, though having the power to bind or exclude all (Section 9 (a)), may not in fact represent the interests of all the employees in such unit.

The order of the Board directing The Associated Press to reinstate Morris Watson with the payment of lost wages because of alleged unfair labor practices in violation of Sections 8(1) and 8(3) of the Act can not be enforced unless the entire policy of the Act of enforcing union control of private enterprise is to be sustained. If The Associated Press may be compelled to reinstate and continue the employment of an editorial employee solely because he happens to be a member of the labor union, The Associated Press and its other editorial employees would be deprived of their first and last defense against the arbitrary, capricious union-domination to which the Act would subject them.

2. The methods of enforcement which the Act adopts are themselves arbitrary and unreasonably intrusive.

Besides being coercive and discriminatory, the Act is also invalid because the machinery for enforcement which it provides violates the established canons of due process of law. The special rights of labor and of labor unions, which the Act attempts to create, are not enforceable in the courts by the ordinary legal or equitable processes applicable to other rights; but, instead, the enforcement of those rights is placed almost exclusively in the hands of the Board created by Congress for that express purpose.

A. *The intrusive and unlimited power conferred upon the Board.*

The Board, as noted hereinbefore, is given broad power to prevent any employer from engaging in the "unfair labor

practices" set forth in Section 8 of the Act (Section 10 (a)). To this end the Board may entertain any charges and issue complaints based thereon; and in the resulting proceeding "the rules of evidence prevailing in courts of law or equity shall not be controlling" (Section 10(b)). If, after hearing testimony, the Board is of "the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, *and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.* Such order may further require such person *to make reports from time to time* showing the extent to which it has complied with the order" (Section 10(c)). The Board must petition the appropriate Circuit Court of Appeals for the enforcement of such orders, but "The findings of the Board as to the facts, if supported by evidence, shall be conclusive" (Section 10 (e)).*

Thus the Board is given extensive powers of inquiry and coercion within the field of personal relations and its findings as to the merits are conclusive. In all this, it should be remembered, "the rules of evidence prevailing in courts of law or equity shall not be controlling." Sufficient illustration of the total disregard of the ordinary rules of logic and of evidence may be found in the record of this very case.

The Board obviously went too far in finding that The Associated Press had committed an unfair labor practice in

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* Additional inquisitorial powers, not involved in this proceeding, are granted the Board in Section 11 of the Act.

discharging Morris Watson. The testimony as to the causes of Watson's discharge, most of it being from the lips of Watson himself, is primarily hearsay and opinion evidence. Where Watson was given important work to do, the Board accepted this as proof of his capability but, where he was given less important work, the Board concluded that he had been punished (R. 424-429). Indeed the Board had no difficulty in finding that changes in Watson's assignments constituted punishment for his union activities, although his work was much the same thereafter, and although he suffered no deduction in pay (R. 427, 218, 219). The Board even went so far as to find as an incontrovertible fact that Watson was discharged "to discourage membership" in the American Newspaper Guild (R. 430). It completely ignored the fact that, to the knowledge of the AP, he had been a prominent member of the Guild for two years prior to his discharge (R. 249, 194-199); that, according to the AP records, there were at least five distinct reasons for Watson's discharge which had been advanced by his immediate superior (R. 251); that he was discharged on the sole ground that he was not performing according to his proven capabilities (R. 251); and, as the record repeatedly shows, that Watson's attitude towards The Associated Press had been openly hostile for a long time prior to his discharge (R. 250, 198-199). Even assuming for the sake of argument, that Watson's union activities within and without the office may have been one of the contributing causes for his discharge, the evidence still shows that there were other causes amply sufficient to justify his dismissal.

Finally, the Board concluded that the discharge was discriminatory because other editorial employees, fearing similar reprisals, resigned from the Guild. Such a conclusion was plainly inconsistent with the testimony of the Board's own witness, one Hippelheuser, a personal friend of Watson's, an editorial employee in the New York office, and a prominent

member in the Guild ever since its inception.* He said no steps had been taken against him, that he was in good standing with the AP, and that there were "no uncomfortable relationships whatsoever" (R. 244).

The record in this case would seem, therefore, fully to substantiate the fact that the Act confers upon the Board unprecedented power to delve into the private affairs of individuals and private corporations. And in exercising this intrusive and arbitrary power the Board, not being subject to the established rules of procedure and evidence, obviously threatens employers constantly with unnecessary annoyance and irreparable injury.

Manifestly these broad inquisitorial powers of the Board (when exercised in conjunction with the power of the Board to gerrymander bargaining units, designate representatives for the purposes of collective bargaining and actually compel the employer to "bargain collectively") constitute an intolerable interference with the right of employers to manage the internal affairs of their private enterprises. Interferences with the right to management, far less extensive in scope, have long been regarded as inconsistent with fundamental rights.**

This was emphasized by the Court in *Wilson* v. *New*, 243 U. S. 332, 347, where, even in regard to public carriers, it said:

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* This is the testimony which he gave (R. 244):

"Q. You are in perfectly good standing up to now at the Associated Press in your employment? A. I suppose so.

Q. Under no charges or complaints or anything? A. I must say that there has never been any step directed against me of any kind.

Q. There are no uncomfortable relationships whatsoever? A. No."

** See for example: *Wilson* v. *New*, 243 U. S. 332, 347, 386; *Adams* v. *Tanner*, 244 U. S. 590; *Truax* v. *Corrigan*, 257 U. S. 312, 338; *Tyson & Bro.* v. *Banton*, 273 U. S. 418; *Wolff Co.* v. *Industrial Court*, 262 U. S. 522; *Southwestern Bell Tel. Co.* v. *Public Service Commission*, 262 U. S. 276, 289.

> "It is also equally true that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is *primarily private,* the establishment and giving effect to such agreed on standard is not subject to be controlled or prevented by public authority."

B. *The power to compel employers to reinstate discharged employees with back pay violates the Seventh Amendment as well as the Fifth Amendment to the Constitution.*

One of the most arbitrary of all the unreasonable provisions of this Act is the provision in Section 10(c) giving the Board the power "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." Penalizing the discharge of an employee is, in itself, so arbitrary that it violates due process of law. *Adair* v. *United States,* 208 U. S. 161, *Coppage* v. *Kansas,* 236 U. S. 1. This provision, however, is more drastic than the penalties considered in the *Adair* and *Coppage* cases; for here the employer (1) must not only reinstate in his personal service, and maintain in that service, a person whom he is unwilling to employ, but (2) he is compelled to pay money damages without resort to a trial by jury.

It has long been a maxim of courts of equity that contracts of personal service will not be specifically enforced. The reason for this has been the recognition that compulsory personal service is not only intolerable but that it is seldom satisfactory from the point of view of either party. It is true that in *Texas & New Orleans Railroad* v. *Railway & Steamship Clerks,* 281 U. S. 548, reinstatement of employees, discharged in defiance of an injunction, was ordered as a proper method of purging the railroad of contempt. That was an

unusual situation where the court deemed such extreme action necessary in order to restore the *status quo*. It does not follow that legislation may supersede court action. Yet this, in substance, is what Section 10(c) attempts to accomplish.

Here the AP must employ a person whom it *does* not want, not to restore the *status quo* but perhaps to perpetuate it. Neither the subject matter, the terms, nor the duration of the contract are of its own choosing. The AP must refrain from employing other persons more to its liking in order to leave room for Watson, or may even be compelled to discharge some non-union editorial employee in order to make room for Watson. And, presumably, the Board will maintain a constant surveillance over Watson and the AP, if he is reinstated, to be sure that he has been reinstated "to his former position, without prejudice to any rights or privileges previously enjoyed by him" (Board's Order, R. 433).

Circuit Judge Wilbur, in an opinion which has just been handed down by the Ninth Circuit Court of Appeals (January 11, 1937) in *National Labor Relations Board* v. *Mackay Radio and Telegraph Company*, emphasized and declared invalid, "as government by injunction," many of these arbitrary features of the Act. In so doing, he took particular issue with the decision of the Court below in this case, stating:

> "Can we join the Circuit Court of Appeals of the Second Circuit in saying that the employer remains the 'Master of the operation of his business,' when he has lost the power to control his employees? The employees are cemented into their position not because of fidelity to their employer but because of fidelity to a labor organization. It was said long ago that 'A man cannot serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other.' (Matt. 6:27.)
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> * * * * *

> Is it not clear that by the National Labor Relations Act, and its practical operation the federal government has assumed control of the business of the employer in one of its most vital features, namely, the tenure of its employees' jobs?"

It would seem that, even if the discharge of Morris Watson were wrongful, the proper and only reasonable reparation would be to permit Watson to sue in a court of law for the damages caused him. The order of reinstatement, however, would not only compel The Associated Press unwillingly to accept and pay for the personal services of Morris Watson at the rate in force at the time of his discharge, but it also grants Watson, without jury trial, an award of money damages in excess of $2,000 (R. 433). This it would seem is done in flagrant violation of the Seventh Amendment which guarantees the right to trial by jury.

Judge Wilbur in the *Mackay Radio and Telegraph* case, *supra*, further held that the order of the Board, requiring the payment of wages during the period of unemployment, violated the Seventh Amendment. He said:

> "An action for damages for a wrongful discharge of an employee is a form of action known to the common law and well within the right to a trial by jury as known at common law. Hence the Act, so far as it authorizes the Board to assess damages without the intervention of a jury, is unconstitutional (see discussion of corresponding provisions of the Interstate Commerce Act as first enacted in 1887 [24 Stat. 379], before its amendment in 1888 [25 Stat. 855]; *Western N. Y. & P. R. Co.* v. *Penn. Refining Co.*, 137 Fed. 343, 349. See also, 12 C. J. 131, §193)."

POINT IV.

The Act, in its application to The Associated Press, violates the First Amendment to the Constitution which guarantees to citizens freedom of speech and freedom of the press.

This case does not involve those employees of The Associated Press who are engaged in mechanical or commercial activities. As already emphasized, it relates exclusively to the relation between The Associated Press and its editorial employees. Even if the Act could be constitutionally applied to employers engaged in trade or production, even if it were valid as applied to The Associated Press and its employees engaged in the mechanical transmission of news, it is still submitted that the Act, as applied to The Associated Press and its editorial employees, violates the First Amendment to the Constitution.

The Associated Press, as its name denotes, is in substance the press itself. As heretofore shown, The Associated Press is a membership corporation consisting solely of those persons who actually own and operate the newspapers of the country. Only owners of newspapers are eligible for membership (Board Ex. 4, By-Laws, Art. I, Art. II, Sec. 1). The Associated Press is engaged in obtaining and procuring information and intelligence, by its own means, by exchange and otherwise, for the use and benefit of its members and the furnishing and supplying of the same to them for publication in the newspapers which they own (Board Ex. 4, Certificate of Incorporation). Each member is entitled to receive a news service, which he shall take and publish regularly in the newspaper specified in the member's certificate of membership, and he is enjoined from using the news received by him for any other purpose (Board Ex. 4, By-Laws, Art. VII, Secs.

2 and 5, Art. VIII, Sec. 3). Each member shall also furnish to the Association all the news of the member's district, the area of which is determined by the Board of Directors (Board Ex. 4, By-Laws, Art. VIII, Secs. 3 and 4). There are more than 1300 members of The Associated Press, representing morning, evening and Sunday newspapers, in all important cities and towns in the United States. It is stated in a document offered in evidence by the Board (Board Ex. 9, p. 3):

> "The membership of The Associated Press includes persons of *every conceivable political, economic and religious advocacy.* The *one* thing upon which they are united, so far as *The Associated Press* news service is concerned, is that it *shall be wholly free from partisan activity, or even the expression of any opinion whatever.* The service is intended to be limited to *the reporting of events without bias.* To this end the news service is intentionally and necessarily subjected to the criticism of its fifteen directors, its more than 1,300 members and indeed the reading public. *It is the theory of the organization that, in a self-governing country like ours, the citizens, if given the facts, must be able to form their own opinions respecting them.*"

Impartiality and freedom from any bias is the fundamental aim, the *sine qua non,* of The Associated Press. And largely through its efforts, this is also the aim of the American Press at large.

The Associated Press collects items of news, which are delivered to its various offices and there read and edited by its editorial staff, and thereafter whatever news has been selected for transmission to members is sent to the newspapers of the country for publication by them.

Morris Watson, it will be remembered, was employed as one of the editorial staff of The Associated Press in its New York office. He prepared or received news reports, edited or

rewrote the news items and then delivered them to a filing editor for further revision, and if found by the latter to be appropriate, they were sent out over the public communication lines to the members. Watson was discharged, as shown by the records of the AP, "solely on the grounds of his work not being on a basis for which he has shown capability" (R. 251). It has been found that he was discharged because of union activities and, although he was concededly competent at some time before his discharge, it has not been found that Watson was qualified for the position he occupied at the time of his discharge. Indeed, we submit that only his employer is in a position to determine his qualifications as an editorial employee.

The Labor Board now decrees that The Associated Press and its officers and agents shall "(a) offer to Morris Watson immediate and full reinstatement *to his former position*, without prejudice to the rights and privileges previously enjoyed by him, (b) make whole said Morris Watson for any loss of pay which he has suffered by reason of his discharge * * *" (R. 433). That is to say, that Watson must be reemployed by The Associated Press, against its will, as an editorial worker in compiling and editing news for publication in American newspapers. This is ordered irrespective of his present capacity or qualification or his acceptability by his employer, and irrespective of whatever bias he may have acquired by reason of his discharge.

It is asserted as the basis of jurisdiction in this case that the question of Watson's discharge and reinstatement is a matter directly affecting the interstate commerce activities of The Associated Press and that, as Congress may regulate those interstate activities, so it must necessarily have the power to regulate any matters which directly affect them. The sole basis for jurisdiction in regard to Watson's employment must, therefore, stand or fall upon the power of Con-

gress to regulate the activities in which The Associated Press is engaged. That is to say, the order to reinstate Watson presupposes, and is wholly dependent upon, the power to regulate the gathering, production, and dissemination of news for the American press. News and intelligence is, in disregard of the First Amendment to the Constitution, treated as an ordinary article of commerce, subject to Federal supervision and control. Logically, and on principle alone, the National Labor Relations Act, as applied to The Associated Press, is thus an infringement upon that freedom of expression which is the essence of free speech and of a free press.

Furthermore, the National Labor Relations Act, as applied to The Associated Press in this case, actually destroys the independence of the press of this country. Can freedom and independence of the press be maintained if a Federal bureau may dictate to the American newspapers the persons they employ to prepare their news reports? How can impartiality and independence of reporting be maintained under such a system of administrative supervision? How can accuracy, independence and impartiality survive a deliberate attempt by the Government to impose upon The Associated Press a requirement that its news editors be union men?

As we have seen, interference with the internal management of any private concern is inconsistent with due process of law. Where, however, the private concern is not dealing in ordinary commercial commodities but is engaged exclusively in the formulation and dissemination of news for the press, such interference is still more intolerable in that it constitutes *an encroachment upon the management and policy of the press itself*. Whenever a union editorial employee of The Associated Press is discharged, a case is at once made for the Labor Board by the claim, whether rightly or not, that membership in a labor organization has been discouraged or that the employee has been discriminated against. The ques-

tion of editorial personnel then becomes a question for the Board to determine. And the management of the editorial affairs of this great news service of the American Press, in the gathering and preparation of news, is displaced by the Labor Board which Congress has created.

It is submitted that The Associated Press cannot freely perform the functions delegated to it by its 1300 newspaper members if its selection of news writers and other editorial employees is to be subject to such control by the Labor Board. From the point of view of The Associated Press, the purposes of the Act make fundamentally inoperative and impossible the maintenance of that independence necessary to deliver an unbiased news report to the American newspapers, and we regard it as self-evident that it is the management of The Associated Press, and the management alone, that is in a position to determine whether an employee's work, his character or his prejudices should permit him to become or to remain an employee of the organization.

Freedom of the press and freedom of speech, as guaranteed by the First Amendment, means more than freedom from censorship by government; it means that freedom of expression must be jealously protected from any form of governmental control or influence. That any direct or indirect limitation upon the press of the country by Federal or State legislation can not be countenanced in this free country, has been vigorously and eloquently proclaimed by this Court on more than one occasion. For a profound discussion of the historical background of the First Amendment and the time-honored principles which brought it into being, see *Near* v. *Minnesota*, 283 U. S. 697.*

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* For general discussions of the fundamental rights of freedom of speech and the press, see also: *Gitlow* v. *New York*, 268 U. S. 652, 666, 667; *Whitney* v. *California*, 274 U. S. 357, 371, 372, 373-378; *Stromberg* v. *California*, 283 U. S. 359, 368, 369.

Freedom of expression, it would seem, is as precious as either due process or the equal protection of law. In the recent case of *Grosjean* v. *American Press Co. Inc.*, 297 U. S. 233, this Court declared the Louisiana statute imposing a tax upon newspapers, enjoying a circulation of more than 25,000 copies per week, to be, in application, an unwarranted restriction of the press by Government and, for this reason alone, a violation of due process. And the Court said (p. 250):

> "The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. *A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.*"

In the still more recent case of *DeJonge* v. *State of Oregon*, (decided January 4, 1937) U. S. , a state statute was declared to be an unconstitutional restraint upon freedom

of speech in so far as it authorized a particular charge against a defendant, solely because he had participated in a meeting held under the auspices of the Communist party. There having been no advocacy at the meeting of criminal syndicalism, prohibited by the State Law, the application of the statute to the defendant was held destructive of the very spirit of the First Amendment.

Likewise, in the case at bar, the National Labor Relations Act, even though it be held to apply validly to certain employments, still can not be enforced against an editorial agency of the press where so to do permits, and even commands, a Federal bureau to control and direct the employment of the persons who compose and determine the contents of the news reports upon which the nation at large relies as "the great interpreters between the Government and the people." To name the men who shall choose and write the news for publication is no different either in principle or in result from naming what shall be written or published. Here the author and the product are one and inseparable. If one is to be free, so must the other.

CONCLUSION

The order of the Court below, granting the Petition of the National Labor Relations Board for the enforcement of its order, should be reversed.

January 22, 1937.

Respectfully submitted,

JOHN W. DAVIS,
WILLIAM C. CANNON,
HAROLD W. BISSELL,
EDWIN F. BLAIR,
Counsel for Petitioner.

Appendix A.

The National Labor Relations Act of July 5, 1935

(PUBLIC—No. 198—74TH CONGRESS; 49 STAT. 449; 29 U. S. C. 151)

[S. 1958]

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual

liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District

of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

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[1] So in original.

National Labor Relations Board

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the

provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District

of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the

employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin[1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the trans-

[1] So in original.

cript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such pro-

ceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any

circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for

the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member

of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7(a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided,* That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

INDEX

	Page
Petitioner's point I	2
Petitioner's point II	5
Petitioner's point III	6
Petitioner's point IV	10

CITATIONS

Cases:

Adair v. *United States*, 208 U. S. 161	4
American Steel Foundries v. *Tri-City Central Trades Council*, 257 U. S. 184	9
Associated Press v. *Herrick*, 13 F. Supp. 897	6
Baltimore & Ohio R. R. v. *Interstate Commerce Comm'n*, 221 U. S. 612	2
Bradley Lumber Co. v. *National Labor Relations Board*, 84 F. (2d) 97, No. 151, Oct. Term, 1936	6, 11
Buchsbaum & Co., S., v. *Beman*, 14 F. Supp. 444	6
Carter v. *Carter Coal Co.*, Nos. 636 and 651, October Term, 1935	5
Chicago Board of Trade v. *Olsen*, 262 U. S. 1	6
Heller Bros. Co. v. *Lind*, decided April 2, 1936 (Col.)	6
National Labor Relations Bd. v. *New England Transportation Co.*, 14 F. Supp. 497	6
Pennsylvania Federation v. *Pennsylvania R. R. Co.*, 267 U. S. 203	4
Precision Castings Co. v. *Boland*, 13 F. Supp. 877	6
Railroad Retirement Board v. *Alton R. Co.*, 295 U. S. 330	7
Schechter Corp., A. L. A., v. *United States*, 295 U. S. 495	5
Second Employers' Liability Cases, 223 U. S. 1	2
Southern Railway v. *United States*, 222 U. S. 20	2
Stafford v. *Wallace*, 258 U. S. 495	6
Stout v. *Pratt*, 12 F. Supp. 864	6
Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548	2, 3, 4, 6, 9, 10
Virginia Railway Co. v. System Federation No. 40, decided June 18, 1936 (C. C. A. 4th), No. 324, October Term, 1936	4

Statute:

National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449 (U. S. C., Supp. I, Title 29, Secs. 151 *et seq.*)	1

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Solicitor General, on behalf of the respondent, National Labor Relations Board, joins in this petition, upon the ground that the constitutionality of the National Labor Relations Act[1] as applied to the petitioner is an important question of Federal law, which has not been but should be settled by this Court. A decision on the issues raised in the instant case will clarify the valid scope and application of the Act in an important category of fact situations, and settle certain questions frequently raised under the First and Fifth Amendments.

[1] C. 372, 49 Stat. 449 (29 U. S. C. Sup. I, Sec. 151 *et seq.*), approved July 5, 1935. The text of the Act is printed as an appendix hereto, pp. 12–30, *infra*.

In order that the issues may be properly defined, certain of the allegations in the petition and contentions in the accompanying brief call for refutation or comment.

PETITIONER'S POINT I

Petitioner's argument that "the employer-employee relationship, whether in production, in the current of commerce or on the very instrumentalities of commerce, is a purely local one which does not directly affect interstate commerce and therefore is not susceptible of Federal regulation" (Br. p. 9), is wholly without foundation. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Second Employers' Liability Cases*, 223 U. S. 1; *Southern Ry. Co.* v. *United States*, 222 U. S. 20; *Baltimore & Ohio R. R.* v. *Interstate Commerce Comm'n*, 221 U. S. 612.

In the *Texas & New Orleans* case, this Court entertained no doubt of Federal authority under the commerce clause to safeguard the freedom of employees in self-organization and choice of representatives in negotiations with their employers, by prohibiting interference therewith by interstate carriers in their relations with various classes of their employees, including those not directly engaged in interstate commerce such as baggagemen, ticket agents, train dispatchers, and other clerical employees.

The National Labor Relations Act, like the Railway Labor Act of 1926 upheld in the *Texas & New*

Orleans decision, proceeds on principles fundamental to the promotion of harmonious industrial relations and the protection of interstate commerce from the burdens and obstructions caused by industrial strife; namely, protection of employees in their self-organization, and encouragement of the adjustment of disputes between employers and employees through conference, negotiation, and bargaining. Both statutes require compliance with the procedure of collective bargaining; neither imposes compulsory arbitration nor requires acceptance by either party of particular demands in bargaining negotiations. While the Railway Labor Act included also a somewhat elaborate machinery for voluntary mediation and arbitration particularly designed for the railroad industry, such machinery is available on a similar voluntary basis through the work of the Conciliation Service of the United States Department of Labor, which the National Labor Relations Act does not attempt to duplicate.

The prohibition against interference, influence, and coercion in the Railway Labor Act did not, as petitioner maintains (Br. p. 12–13), apply merely to the selection of representatives for the purposes of arbitration, but as this Court and the lower courts expressly pointed out in the *Texas & New Orleans* case, included the same protection in negotiations between the employer and employees; that is, in collective bargaining (281 U. S. at p. 570; 38 F. (2d) at p. 16; 24 F. (2d) at p. 431). Indeed,

the carrier in the *Texas & New Orleans* case had refused to submit the pending wage controversy either to arbitration or mediation by the Railway Labor Board (281 U. S. at p. 559; 24 F. (2d) at p. 432–3). The present Act goes no further than protection of liberties which the Court there held to be within the constitutional scope of Federal action under the commerce power and without offense to the Fifth Amendment.

In the *Texas & New Orleans* case, this Court expressly held "inapplicable" the case of *Adair* v. *United States*, 208 U. S. 161, relied upon there, as here (Br. p. 9–10). The case is likewise inapplicable here. Petitioner cannot complain of the statute on constitutional grounds since, like the objecting carrier in the *Texas & New Orleans* case, it has "no constitutional right to interfere with the freedom of the employees in making their selections" of representatives for collective action (281 U. S. at p. 571).

In *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 203, cited by petitioner (Br. p. 10), this Court refused to enjoin the railroad from ignoring the ruling of the Labor Board because the statute itself (the 1920 Act) granted no enforceable rights. This led to the Act of 1926, the prohibitions of which were upheld in the *Texas & New Orleans* case, *supra*. The 1926 Act was amended in 1934, and, as so amended, guaranteeing the same rights protected by the National Labor Relations Act, has been upheld in *Virginian Rail-*

way Co. v. *System Federation No. 40*, 84 F. (2d) 641 (C. C. A. 4th), now pending in this Court on petition for certiorari, No. 324, October Term, 1936.

PETITIONER'S POINT II

The basic problems of protecting interstate and foreign commerce by the regulation of such labor relations are not limited to the railroads, and a policy constitutional and of proved success there must be constitutional and equally successful in other interstate enterprises whose uninterrupted operations Congress may reasonably regard as important or essential for the interstate and foreign commercial life of the Nation. Under the circumstances disclosed in the record and found by the Board and the Circuit Court of Appeals, petitioner's editorial employees are engaged "in" interstate and foreign commerce or at a "throat" in a well defined current or flow of such commerce. *Carter* v. *Carter Coal Co.*, Nos. 636 and 651, October Term, 1935; *A. L. A. Schechter Corp.* v. *United States*, 295 U. S. 495, 543. The question of the Act's application to an employer some or all of whose employees are engaged in producing a commodity, under varying circumstances, is not involved here.

It is not material in this connection that the transmission of some of the news received at the New York office may be interrupted for a very brief period and given that change of expression,

if any, necessary to insure the objectives of speed and accuracy. Cf. *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 35; *Stafford* v. *Wallace*, 258 U. S. 495, 515, 516. Such editorial activities are an integral and indivisible part of respondent's enterprise in interstate and foreign commerce; and the Act is validly applicable because it is addressed to abuses which, unless corrected, recurrently and directly burden the flow of such commerce. With one exception, there is no conflict among the decisions of the lower courts as to the validity of the Act's application to this category of situations. *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97, 99 (C. C. A. 5th), now pending in this Court on petition for certiorari, No. 153, October Term, 1936; *National Labor Relations Board* v. *New England Transportation Co.*, 14 F. Supp. 497 (Conn.); *S. Buchsbaum & Co.* v. *Beman*, 14 F. Supp. 444, 448–9 (N. D. Ill.); *Precision Castings Co.* v. *Boland*, 13 F. Supp. 877, 884–5 (W. D. N. Y.); *Heller Bros. Co.* v. *Lind*, decided April 2, 1936 (D. C.); *Associated Press* v. *Herrick*, 13 F. Supp. 897, 898–9 (S. D. N. Y.) *Contra: Stout* v. *Pratt*, 12 F. Supp. 864 (W. D. Mo.).

PETITIONER'S POINT III

The validity under the Fifth Amendment of the prohibition against interference with employees' self-organization and free choice of representatives through discrimination against employees (Secs. 8 (1), 8 (3)) is fully sustained by the *Texas & New Orleans* case, *supra*. The decree there up-

held included the requirement of reinstatement of certain employees discharged on account of organizational activity subsequent to the entry of a temporary injunction by the District Court. This Court's opinion referred to the discharges not only in connection with the contempt proceedings (281 U. S. at p. 557), but also expressly listed them among the forms of interference practiced by the railroad and before the Court for decision (*Id.* at p 560). When the Court said that the Railway Labor Act did not "interfere with the normal exercise of the right of the carrier to select its employees or to discharge them" (p. 571), it was obviously holding that the use of the discharge weapon for the purpose of interfering with "the right of the employees to have representatives of their own choosing" was not a *"normal exercise"* of the right to hire and discharge which is protected by the Fifth Amendment. See also *R. R. Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369. As the court below properly ruled (R. 445):

> This act does not hamper the legitimate right of the employer, who may discharge his employees for inefficiency or any other cause agreeable to him, provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively. The employer retains full control to bargain with his employees over the wage he shall pay and the working conditions he shall furnish. He remains the master of the operation of his business.

Petitioner's objections under the due process clause (Br., pp. 15–18) are based chiefly on the misconceptions, first, that the validity of the Act's provisions regarding refusal to bargain collectively, majority representation in collective bargaining, and the determination of the bargaining unit (Secs. 8 (5), 9 (a), 9 (b)) are before the Court for decision, and, second, that the Act fixes wages, hours, or other conditions of employment.

As to the first, the sole ground of the Board's complaint and the order upheld below is the prohibition safeguarding from interference, restraint or coercion the employees' existing rights of self-organization and freedom in the choice of representatives for collective action, under subdivisions (1) and (3) of Section 8. The other provisions challenged by the petitioner are not involved in this proceeding at all. The fact is that there is now pending for decision by the Board a proceeding under Section 8 (5) of the Act against this petitioner on a complaint of refusal to bargain collectively with the representatives designated by a majority of its editorial employees. The questions now sought to be raised by petitioner may well be involved in this subsequent proceeding should any order made therein aggrieve petitioner or be claimed to infringe its constitutional liberties.

There is nothing to justify petitioner's further contention that the Act seeks to establish minimum or maximum wages or hours by legislative fiat, and infringes on freedom of contract in pri-

vate bargaining. The statute determines no bargain or terms of contract, nor does the Board; these are left entirely to negotiation by the parties themselves through their duly chosen representatives, that is, by collective private bargaining. Should any contract be arrived at through this familiar, judicially approved procedure, it would have no more or no other binding quality by virtue of the statute than in the absence of the statute.

The Act merely guarantees that the procedure of collective bargaining be not denied by the petitioner if and as petitioner's employees select representatives for that purpose, under appropriate circumstances (Sec. 8 (5)). Petitioner's argument proceeds upon the mistaken theory that the only form of "private bargaining" protected by the due process clause is individual bargaining. The liberty of employees to exercise their right of self-organization and choice of representatives for collective bargaining has been recognized by this Court (*American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209), and held to be a right of property. *Texas & New Orleans R. Co.* v. *Brotherhood*, 281 U. S. 548, 571. By protecting this existing right of private collective bargaining, the statute seeks to maintain and protect some semblance of that equality and liberty of contract which petitioner strangely claims the statute would destroy. If employees desire to exercise their freedom to contract collectively, petitioner may not destroy this freedom by destroying the

only means whereby such collective action may be achieved, namely, through freedom in self-organization and choice of representatives. This Court so held in the clearest language in the *Texas & New Orleans* case, pointing out that "such collective action would be a mockery if representation were made futile by interferences with freedom of choice." 281 U. S. at p. 570. Thus, if employees desire, they may use their collective bargaining power in establishing contractual arrangements with respect to the terms and conditions of their work. The statute protects their liberty so to do. By preventing petitioner from destroying this liberty, no right of petitioner is infringed. (*Id.*)

PETITIONER'S POINT IV

The Act, as here applied and under the facts of this case, does not abridge the freedom of the press guaranteed in the First Amendment. The Act imposes no previous or subsequent restraint or censorship whatever; it levies no discriminatory tax; the petitioner is utterly free "to present the news it wants to as it wants to" (Br. p. 19). It was not even claimed by petitioner that the employee here in question was discharged because of bias in editing news; he was discharged because of his activity as a member of an organization of petitioner's employees devoted to ameliorating their conditions of work and as a destructive blow at their right to associate for purposes of collective bargaining and other mutual aid and protection.

Petitioner may not invoke the constitutional guarantee of freedom of the press as a cloak for destroying the freedom of its employees thus to associate among themselves.

Wherefore, in order that the power of Congress to protect interstate and foreign commerce by the provisions of the statute invoked against petitioner, and under the facts of this case, may be settled by this Court, and because the questions for decision are properly raised under the procedure of the statute,[2] it is respectfully prayed that the petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit be allowed.

Respectfully submitted.

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SEPTEMBER 1936.

[2] In *Bradley Lumber Co.* v. *National Labor Relations Board*, No. 153, October Term, 1936, the Government opposes the petition for certiorari in part because the constitutional questions sought to be raised were improperly presented in a manner contrary to the procedure prescribed by Section 10 of the Act.

APPENDIX

NATIONAL LABOR RELATIONS ACT, (ACT OF JULY 5, 1935, C. 372, 49 STAT. 449; U. S. C., SUP. I, TITLE 29, SECS. 151 ET SEQ.)

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials of manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all

[1] So in original.

the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of

conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified

from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership

in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [2] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

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[2] So in original.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of

Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds

for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript

of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board

shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of serv-

ice of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act ap-

proved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	9
Summary of Argument	16
Argument	25
I. The application of the National Labor Relations Act to petitioner is a valid exercise of the power of Congress to regulate commerce with foreign nations and among the several States	25
A. Petitioner's operations constitute interstate and foreign commerce, and the editorial employees here involved are in, or intimately and directly associated with, such commerce	29
1. The nature of petitioner's operations	29
2. The work of the editorial employees of petitioner is in, or intimately and directly connected with, petitioner's interstate and foreign commerce	35
B. Subsections (1) and (3) of Section 8 of the Act, as applied to interstate enterprises, bear a reasonable and direct relation to the protection of interstate commerce from the burden of industrial strife, and consequently are a valid exercise of the commerce power	40
1. Industrial strife in interstate enterprises constitutes a burden on interstate commerce which Congress may remove or prevent	40
2. Subsections (1) and 8 (3) of Section 8 of the National Labor Relations Act provides a reasonable means of eliminating the burdens on interstate commerce arising out of industrial strife	45
(A) The Act eliminates industrial strife growing out of the efforts of employees to organize and bargain collectively by removing the causes of such strife	46
(B) The Act facilitates the prevention and adjustment of industrial strife arising out of differences over terms and conditions of employment	50
C. The application of the National Labor Relations Act to this petitioner in its relations with its editorial employees is a valid exercise of the commerce power	69

Argument—Continued. Page

II. Section 8, subsections (1) and (3) of the National Labor Relations Act are, as applied to the petitioner, consistent with the Fifth Amendment 77

A. The issue of due process is governed by *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548 78

B. Apart from controlling authority, the provisions here involved are reasonable and consonant with due process 89

III. The National Labor Relations Act, as here applied to petitioner, does not contravene the Seventh Amendment 101

IV. The National Labor Relations Act as here applied does not violate the guarantee of freedom of the press contained in the First Amendment 104

V. The application of the Act to persons other than petitioner, and the validity of provisions other than those invoked against petitioner, need not be considered since petitioner has no standing to raise such questions; in any event such possible applications and such other provisions are separable from those here in issue 108

A. The constitutionality of the Act's application to classes of persons other than petitioner and the constitutionality of provisions of the Act not sought to be applied to petitioner, are matters of which petitioner may not complain 110

B. In any event the applications or provisions of the Act to which petitioner objects are clearly separable 111

1. The scope of the Act 111

2. The separability of alleged invalid provisions 119

Conclusion 124

Appendix 125

CITATIONS

Cases:

Abrams v. Van Schaick, 293 U. S. 188 ..... 24, 110

Adair v. United States, 208 U. S. 161 ..... 20, 85, 87

Addyston Pipe & Steel Co. v. United States, 175 U. S. 211 72

Adkins v. Children's Hospital, 261 U. S. 525 98

Agwilines, Inc. v. National Labor Relations Board, decided November 22, 1936 (C. C. A. 5th) 42, 108, 113

Allgeyer v. Wisconsin, 165 U. S. 194 94

American Bank & Trust Co. v. Federal Reserve Bank of Atlanta, 256 U. S. 350 94

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 ..... 21, 46, 91, 105

Cases—Continued.

	Page
Anderson v. *Shipowners Ass'n*, 272 U. S. 359	48, 58
Ann Arbor R. Co. v. *United States*, 281 U. S. 658	115
Arizona v. *California*, 283 U. S. 423	116
Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288	26, 110, 117
Associated Press v. *Herrick*, 18 F. Supp. 897	72, 118
Ass'n of Rock Island Employees v. *Lowden*, 15 F. Supp. 176, affirmed 86 F. (2d) 458	100
Bacon v. *Illinois*, 227 U. S. 504	76
Baltimore & Carolina Line v. *Redman*, 295 U. S. 654	101
B. & O. R. R. Co. v. *I. C. C.*, 221 U. S. 612	48, 58, 94
Barton v. *Barbour*, 104 U. S. 126	102
Bedford Cut Stone Co. v. *Stone Cutters' Ass'n*, 274 U. S. 37	42
Berea College v. *Kentucky*, 211 U. S. 45	119
Binderup v. *Pathe Exchange*, 263 U. S. 291	44, 75
Borden's Farm Products Co. v. *Ten Eyck*, 297 U. S. 251	69
Bradley Lumber Co. v. *National Labor Relations Board*, 84 F. (2d) 97, certiorari denied, No. 153, October Term, 1936	48, 113
Buchsbaum Co., S. v. *Bowers*, 14 F. Supp. 444	98, 113
Bunting v. *Oregon*, 243 U. S. 426	94
Caldwell v. *North Carolina*, 187 U. S. 622	75
Caminetti v. *United States*, 242 U. S. 470	18, 85
Carter v. *Carter Coal Co.*, 298 U. S. 238	18, 25, 39, 43, 74, 93, 119, 123
Chamber of Commerce of Minneapolis v. *Federal Trade Commission*, 13 F. (2d) 673	105
Champlin Refining Co. v. *Commission*, 286 U. S. 210	78, 121, 123
Chicago, B. & Q. R. Co. v. *McGuire*, 219 U. S. 549	89, 95
Chicago Board of Trade v. *Olsen*, 262 U. S. 1	20, 33, 75, 78, 79, 110
Chicago, Rock Island & P. Ry. Co. v. *Perry*, 259 U. S. 548	94
Clark v. *Wooster*, 119 U. S. 322	33, 102
Coppage v. *Kansas*, 236 U. S. 1	20, 85, 87
Coronado Coal Co. v. *United Mine Workers*, 268 U. S. 295	42
Crowell v. *Benson*, 285 U. S. 22	101, 115, 121
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282	94, 110
Dickson v. *Uhlmann Grain Co.*, 286 U. S. 165	44
Dillingham v. *McLaughlin*, 264 U. S. 370	110
Di Santo v. *Pennsylvania*, 273 U. S. 34	74
Dorchy v. *Kansas*, 264 U. S. 286	119
Duplex Printing Co. v. *Deering*, 254 U. S. 443	42, 105
Eastman Kodak Co. v. *Southern Photo Materials Co.*, 273 U. S. 359	94
El Paso & N. E. Ry. v. *Gutierrez*, 215 U. S. 87	115, 117
Employers' Liability Cases, 207 U. S. 463	24, 118
Erie R. R. v. *Williams*, 233 U. S. 685	94
Eureka Pipe Line Co. v. *Hallanan*, 257 U. S. 277	75

Cases—Continued. Page

Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67 27
Federal Trade Commission v. *American Tobacco Co.*, 264 U. S. 298 115
Federal Radio Commission v. *Nelson Bros. Co.*, 289 U. S. 266 32
Filer & Stowell Co. v. *Diamond Iron Works*, 270 Fed. 489, certiorari denied, 256 U. S. 691 103
Fisher's Blend Station v. *Tax Commission*, 297 U. S. 650 32
Florida v. *United States*, 292 U. S. 1 27
Foster Bros. Mfg. Co. v. *National Labor Relations Board*, 85 F. (2d) 964 112
Gibbons v. *Ogden*, 9 Wheat. 1 ..... 17, 33
Gompers v. *Buck's Stove Co.*, 221 U. S. 418 105
Grosjean v. *American Press Co.*, 297 U. S. 233 ..... 104, 105
Guthrie National Bank v. *Guthrie*, 173 U. S. 528 103
Hatch v. *Reardan*, 204 U. S. 152 110
Heald v. *District of Columbia*, 259 U. S. 114 110
Heller Bros. Co. v. *Lind*, decided April 2, 1936; aff'd Nov. 9, 1936 (App. D. C.) 113
Heyman v. *Hays*, 236 U. S. 178 75
Holden v. *Hardy*, 169 U. S. 366 ..... 91, 94
Illinois Central R. Co. v. *Behrens*, 233 U. S. 473 74
Industrial Association v. *United States*, 268 U. S. 64 43
Indiana Farmer's Guide Publishing Co. v. *Prairie Farmer Publishing Co.*, 293 U. S. 268 ..... 23, 34, 105
International News Service v. *The Associated Press*, 248 U. S. 215 ..... 35, 72
International Textbook Co. v. *Pigg*, 217 U. S. 91 33
Jacobs v. *Cohen*, 183 N. Y. 207 97
Jeffrey Mfg. Co. v. *Blagg*, 235 U. S. 571 97
Keokee Consolidated Coke Co. v. *Taylor*, 234 U. S. 224 94
Knoxville Iron Co. v. *Harbison*, 183 U. S. 13 94
Kohl v. *United States*, 91 U. S. 367 101
Lemke v. *Farmers' Grain Co.*, 258 U. S. 50 75
Local 167 v. *United States*, 291 U. S. 293 ..... 22, 100
Loeb v. *Columbia Township Trustees*, 179 U. S. 472 ..... 25, 119
Loewe v. *Lawlor*, 208 U. S. 274 42
Lynch v. *United States*, 292 U. S. 571 119
McCall v. *California*, 136 U. S. 104 72
McLean v. *Arkansas*, 211 U. S. 539 94
Miller v. *Wilson*, 236 U. S. 373 94
Minnesota v. *Blasius*, 290 U. S. 1 ..... 44, 76
Minnesota Rate Cases, 230 U. S. 352 ..... 44, 73
Morehead v. *Tipaldo*, 298 U. S. 587 98

Cases—Continued.

	Page
Mountain Timber Co. v. *Washington*, 243 U. S. 219	108
Muller v. *Oregon*, 208 U. S. 412	94
National Labor Relations Board v. *Mackay Radio & Tel. Co.*, decided Jan. 11, 1937 (C. C. A. 9th)	108, 113
National Labor Relations Board v. *National N. Y. Packing Co.*, 86 F. (2d) 98	42, 75, 113
National Labor Relations Board v. *New England Transportation Co.*, 14 F. Supp. 497	113
Near v. *Minnesota*, 283 U. S. 697	104
Nebbia v. *New York*, 291 U. S. 502	89, 95
Old Dearborn Distributing Co. v. *Seagram-Distillers Corp.*, Nos. 226, 372, present term, decided December 7, 1936	69
Patterson v. *Bark Eudora*, 190 U. S. 169	43, 94
Pease v. *Rathbun-Jones Engineering Co.*, 243 U. S. 273	102
Pennsylvania Federation v. *Pennsylvania R. R. Co.*, 267 U. S. 203	22, 55, 101
Pennsylvania Gas Co. v. *Public Service Commission*, 252 U. S. 23	35
Pennsylvania R. R. Co. v. *United States Railroad Labor Board*, 261 U. S. 72	55, 88
Pensacola Telegraph Co. v. *Western Union Telegraph Co.*, 96 U. S. 1	17, 32
Philadelphia, B. & W. R. Co. v. *Smith*, 250 U. S. 101	74
Pick Mfg. Co. v. *General Motors Co.*, 299 U. S. 3	28
Pipe Line Cases, The, 234 U. S. 548	35
Precision Castings Co. v. *Boland*, 13 F. Supp. 877, aff'd, 85 F. (2d) 15	113
Premier-Pabst Sales Co. v. *Grosscup*, 298 U. S. 226	110, 117
Prudential Ins. Co. v. *Cheek*, 259 U. S. 530	94
Radice v. *New York*, 264 U. S. 292	94
Rail & River Coal Co. v. *Yaple*, 236 U. S. 338	94
Railroad Retirement Board v. *Alton R. R. Co.*, 295 U. S. 330	18, 41, 43, 52, 88, 123
Riley v. *Massachusetts*, 232 U. S. 671	94
Rindge v. *Los Angeles County*, 262 U. S. 700	110
Robertson v. *Baldwin*, 165 U. S. 275	23, 104
Rowlette v. *Rothstein Dental Laboratory*, 63 F. (2d) 150, certiorari denied, 289 U. S. 736	108
St. Louis, Iron Mt. & St. P. Ry. Co. v. *Paul*, 173 U. S. 404	94
Schechter Corp. v. *United States*, 295 U. S. 495	19, 66, 73, 74
Second Employers Liability Cases, 223 U. S. 1	43, 53, 74, 94
Shafer v. *Farmers' Grain Co.*, 268 U. S. 189	75
Shields v. *Thomas*, 18 How. 253	22, 101
Southern Ry. Co. v. *United States*, 222 U. S. 20	43, 53, 74
Sproles v. *Binford*, 286 U. S. 374	115
Stafford v. *Wallace*, 258 U. S. 495	20, 43, 44, 53, 69, 75, 76
Stephenson v. *Binford*, 287 U. S. 251	115

Cases—Continued.

	Page
Strathearn S. S. Co. v. *Dillon*, 252 U. S. 348	94
Sturges & Burn v. *Beauchamp*, 231 U. S. 320	95
Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420	20, 43, 44, 75
Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548	18, 19, 20, 21, 22, 25, 27, 41, 42, 43, 44, 46, 51, 52, 53, 56, 69, 70, 73, 78, 80, 84, 85, 88, 89, 92, 93, 97, 98, 99, 100, 102, 105, 117, 120, 122
Texas & Pacific Ry. v. *Rigsby*, 241 U. S. 33	74
Toledo Newspaper Co. v. *United States*, 247 U. S. 402	104
Trade Mark Cases, 100 U. S. 82	24, 118
Tyler v. *Judges*, 179 U. S. 405	110
United Fuel Gas Co. v. *Hallanan*, 257 U. S. 277	75
United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344	96
United States v. *California*, 297 U. S. 175	18, 35, 73
United States v. *Chicago, Milwaukee, St. Paul and Pacific R. R. Co.*, 282 U. S. 311	115
United States v. *Ferger*, 250 U. S. 199	44, 53
United States v. *Hill*, 248 U. S. 420	35
United States v. *Jin Fuey Moy*, 241 U. S. 394	115
United States v. *New York Central R. R. Co.*, 268 U. S. 603	115
United States v. *Patten*, 226 U. S. 525	43
United States v. *Reading Co.*, 226 U. S. 324	75
United States v. *Reese*, 92 U. S. 214	118
United States v. *Simpson*, 252 U. S. 465	35
United States v. *Wood*, No. 34, decided December 7, 1936	107
Utah Power & Light Co. v. *Pfost*, 286 U. S. 165	110, 121, 124
Virginian Railway Co., The v. *System Federation No. 40*, October Term, 1936, No. 824	78, 119
Washington, Virginia & Maryland Coach Co. v. *National Labor Relations Board*, 85 F. (2d) 990, No. 469, October Term, 1936	113
Western Union Telegraph Co. v. *Foster*, 247 U. S. 105	32, 71, 75
Wiloil v. *Pennsylvania*, 294 U. S. 169	44
Wilshire Oil Co. v. *United States*, 295 U. S. 100	110
Wilson v. *New*, 243 U. S. 332	43, 58
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522	98, 123
Wood, In re, 210 U. S. 246	103

Statutes:

Act of October 1, 1888, c. 1063, 25 Stat. 501	48, 54
Act of 1898, c. 466, 30 Stat. 476	60
Act of March 4, 1913, Sec. 8, c. 141, 37 Stat. 738 (U. S. C. Title 5, Sec. 619)	79

Statutes—Continued. Page

Act for the Coordination of Interstate Railroad Transportation, 48 Stat. 214 (49 U. S. C., § 257 (e)) 96
Adamson Act of 1916, c. 436, 30 Stat. 721 54, 58
Bankruptcy Amendments of 1933, c. 204, 47 Stat. 1481, § 77 (p) and (q) and of 1934, c. 424, 48 Stat. 922 (11 U. S. C., § 207 (l) (m)) 96
Erdman Act of 1898, c. 370, 30 Stat. 424 54
National Industrial Recovery Act, 48 Stat. 198 (15 U. S. C., 707 (a) 96
National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. I, Title 29, §§ 151, *et seq.*) 2, 125
Newlands Act of 1913, c. 6, 38 Stat. 103 54
Norris-LaGuardia Anti-Injunction Act, c. 90, 47 Stat. 70 (29 U. S. C., §§ 102, 103) 95
Public Resolution No. 44, 48 Stat. 1183 67
Railway Labor Act of 1926, c. 347, 44 Stat. 577, as amended by the Act of 1934, c. 691, 48 Stat. 1185 54, 56, 78, 84, 95, 102
Transportation Act of 1920, Title III, c. 91, 41 Stat. 456 54, 55, 58
c. 569, 48 Stat. 979 (U. S. C., Title 18, § 420 (a)–(e) 100

State Statutes:

Ariz. (1931) Rev. Code (Supp. 1934), Sec. 1360a 96
Cal. (1933) Gen. Laws (Deering, Supp. 1933); Act 4104 96
Colo. (1931) Comp. L. (Supp. 1932), Sec. 4204, Laws, 1933, c. 59 96
Idaho, Acts, 1933, c. 215 96
Ill. (1933) Rev. Stat. (Cahill, 1933), Ch. 48, Sec. 237 96
Ind. (1933) Ann. Stat. (Burns, 1933), Sec. 40-506 96
La. Acts, 1934, No. 202 96
Md. Laws, 1935, c. 574 96
Mass. Laws, 1933, c. 351 96
Minn. (1933) Stat. (Mason, Supp. 1936), Sec. 4260-3 96
N. J. Laws, 1932, c. 244 96
N. Y. (1935), Consol. Laws (Supp. 1931-1935), Ch. 7, Sec. 17 96
N. Dak., Laws 1935, c. 247 96
Ohio (1931) Gen. Code (Supp. 1926-1935), Part Second, Title II, ch. 17, Sec. 6241-1 96
Ore., Acts, 1931, c. 247, Acts, 1933, c. 355 96
Penna. (1933) Ann. Stat. (Purdon, pocket Supp. (1934)), Title 43, Sec. 205 96
Utah, Laws, 1933, c. 15 96
Wash., Laws, 1934, c. 7 96
Wis., Statutes, Sec. 103.46 (1929), Statutes (1933), Sec. 268.19 96

Miscellaneous: Page

Anthracite Coal Strike Commission (1903), Report of, Senate Doc. No. 6, 58th Cong., Spec. Sess. 45, 49, 61
Berman, *Labor Disputes and the President of the United States* (1924) 47
Beyer, Otto S., *The Machinery of Cooperation, The Partner, The New Labor Era* (1931), pp. 11 *et seq* 58
Brown, *Selection of Employee Representatives*, Monthly Labor Review (Jan. 19, 1935) 66
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Conditions of Work and Life of Journalists (Int. Labor Office, Studies and Reports, Series L, No. 2, Geneva, 1928) 91
Congressional Record:
Vol. 78, pp. 12209–12232 67
Vol. 79, pp. 7572, 9698 114
Vol. 80, pp. 7948–7952 58, 59
Daugherty, *Labor Problems in American Industry* (1933) 91
Editor and Publisher:
Jan. 25, 1936, pp. 14 *et seq* 34
Apr. 25, 1936, pp. 106–107 32
Nov. 14, 1936 92
Dec. 5, 1936 92
International Yearbook for 1936 92
Federal Register, (Apr. 28, 1936), pp. 321–325 8
Fitch, *Causes of Industrial Unrest* (1924) 45, 91
Guild Reporter:
Dec. 1, 1936 92
Dec. 15, 1936 92
Jan. 1, 1937 92
Jan. 15, 1937 92
Hearings on S. 2926, 73d Cong., 2d Sess., Senate Committee on Education and Labor 67, 69
Hearings on S. 1958, 74th Cong., 1st Sess., Senate Committee on Education and Labor 69
Hearings on H. R. 6288 (Companion bill to S. 1958), 74th Cong., 1st Sess., House Committee on Labor 69
H. Rep. No. 1147, 74th Cong., 1st Sess. 69, 97, 100, 102, 114
Hoxie, *Trade Unionism in the United States* (1923) 91
Industrial Commission (1902), *Final Report of* 60, 91
Industrial Conference called by the President, Report of, (March 6, 1920) 65
Labor and the Government (Twentieth Century Fund, 1935) 49, 54, 66, 68
Lauck and Watts, *The Industrial* Code (1922) 64
Lorwin & Wubnig, *Labor Relations Board* (The Brookings Institution, 1935) 66, 68

Miscellaneous—Continued.
National Adjustment Commission: Page
Chairman's Report for the Period Ending Dec. 31, 1918 63
Report of the Executive Secretary, 1919–1920 64
National Labor Relations Board:
First Annual Report (1936) 116
National Mediation Board:
First Annual Report (1935) 56, 58
Second Annual Report (1936) 56
National War Labor Board:
General Orders, No. 8, Feb. 21, 1918, par. 5 55
Principles and Rules of Procedure (1919) 62
U. S. Bureau of Labor Statistics, Bulletin No. 287 (1921) 47, 62
Perlman & Taft, *History of Labor in the United States* (1935) 64
Proceedings of the First Industrial Conference (Wash., D. C., 1920) 64
Report of the Board of Inquiry for the Cotton Textile Industry (Sept. 20, 1934) 49
Report on the Chicago Strike of June–July, 1894, by the U. S. Strike Commission of 1894–1895 on the Pullman Strike 49
S. Rep. No. 289, *Investigating Strike in Steel Industries*, 66th Cong., 1st Sess 49
S. Rep. No. 1184, 73d Cong., 2d Sess 67
S. Rep. No. 573, 74th Cong., 1st Sess 69, 97, 100, 114
Statement of the President on Approving the National Labor Relations Act, July 1, 1935 (First Annual Report of the National Labor Relations Board (1936)) 114
U. S. Dept. of Labor, Bureau of Labor Statistics:
Bulletin No. 308 (1922), use of Federal Power in Settlement of Railway Labor Disputes 54
Bulletins R. 339 and R. 389 (1936) 57
Bulletin No. 283, *History of the Shipbuilding Labor Adjustment Board*, pp. 98–102 63
Monthly Labor Reviews:
July 1934 144
May 1935 144
Jan. 1936 144
May 1936 144
May–Sept. 1936, monthly "Analysis of Strikes" 57
May–Oct. 1936 144
Monthly Reports on Industrial Disputes 144
U. S. Senate Commission on Industrial Relations, *Final Report and Testimony*, 1906, Vol. 6 91

Miscellaneous—Continued. Page

U. S. Shipping Board, *Report of the Director of the Marine and Dock Industrial Relations Division, Dec. 31, 1918*... 63

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Wheeler, *Employee Elections Conducted by National Labor Relations Board* in Monthly Labor Review (May–Oct. 1935)..... 68

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Witte, *The Government in Labor Disputes* (1932)..... 54, 63

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 436–445) is reported in 85 F. (2d) 56. The findings of fact and order of the National Labor Relations Board (R. 416–433) are reported in 1 N. L. R. B. 788 (1936).

JURISDICTION

The order of the United States Circuit Court of Appeals for the Second Circuit was entered July 20, 1936 (R. 445). The petition for writ of certiorari was filed September 14, 1936, and was granted October 26, 1936 (R. 446). Jurisdiction

of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as here applied to this petitioner, is a valid exercise by Congress of its power to regulate commerce with foreign nations and among the several States.

2. Whether the provisions of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, as applied to this petitioner, are consistent with the Fifth Amendment.

3. Whether the provisions of the National Labor Relations Act as here applied deprive petitioner of the right of trial by jury guaranteed in the Seventh Amendment.

4. Whether the provisions of the National Labor Relations Act as here applied abridge the freedom of the press guaranteed in the First Amendment.

5. Whether petitioner is entitled to question the validity of provisions of the Act other than those here invoked against it, or the application of the Act to persons other than petitioner, and, if so, whether the validity of such provisions or applications is material, because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title

29, Sec. 151 *et seq.*) is printed in the Appendix, *infra;* pp. 125–143. For the convenience of the Court a summary of the significant provisions of the Act is set forth at this point.

Section 1 of the Act sets forth the facts, as declared by Congress, upon which the legislation is predicated. The basic findings are: (1) "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce [1] by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of

[1] The term commerce is defined in Section 2 (6) as "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

commerce."[1] (2) "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees." It is then stated to be the policy of the United States to mitigate and eliminate these obstructions to interstate commerce "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing."

The Act does not fix wages, hours, or other conditions of employment. It merely affirms the recognized liberty of employees to associate without interference from employers and to seek to establish their conditions of employment by private bargaining with their employers through representatives

[1] Of the four factual circumstances mentioned by Congress, only (a) and (b) are relevant in this proceeding. Subdivision (c) is relevant in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, and also in Nos. 420, 421, 422, and 423. Subdivision (d) is not involved or relied upon in any of the cases now pending in this Court.

of their own choosing, and protects these rights against interference and coercion of employers as a means of safeguarding interstate and foreign commerce against the burdens of industrial strife.

Section 7 states the basic rights protected by the Act. It declares that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." To safeguard these rights, Section 8 declares it to be an unfair labor practice for an employer: (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7; (2) to dominate or interfere with the formation or administration of any labor organization, or contribute financial or other support to it; (3) to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; (4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act; or (5) to refuse to bargain collectively with the representatives of employees. Of the unfair labor practices set forth in Section 8, only (1), and (3) and (4) are involved in this or any of the other cases now before this Court.

The National Labor Relations Board is empowered by Section 10 (a) to prevent the foregoing un-

fair labor practices under circumstances in which they are found to be "affecting commerce." That phrase is, in turn, defined in Section 2 (7) as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Section 9 of the Act relates to the selection of representatives for collective bargaining. It provides that representatives selected by a majority of the employees in the appropriate unit shall be the exclusive representative for purposes of collective bargaining, although any individual employee or group of employees may at any time present any grievance to their employer (Sec. 9 (a), (b)). Whenever a question "affecting commerce" arises concerning the representatives of employees, the Board may investigate, hold hearings, or conduct a secret ballot (Sec. 9 (c)). No provision of Section 9 has been applied to petitioner in this case, or to any of the parties in the other cases pending before the Court.

The administrative machinery of the Act is in all substantial respects identical with that of the Federal Trade Commission Act. The Act creates the National Labor Relations Board, composed of three persons appointed by the President by and with the advice and consent of the Senate (Secs. 3–5). The procedural machinery is found in Section 10. Upon the filing of a charge that any person has

engaged or is engaging in an unfair labor practice affecting commerce, the Board is empowered to issue a complaint stating the charges and containing a notice of hearing before the Board or its designated agent. Such person has the right to file an answer and to appear and give testimony at the hearing noticed in the complaint (Sec. 10 (a) and (b)). The testimony taken at the hearing is reduced to writing and filed with the Board. If, upon consideration of all the testimony, the Board is of the opinion that such person has engaged or is engaging in any unfair labor practice affecting commerce, it states its findings of fact and issues an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action as will effectuate the policies of the Act. If upon all the testimony the Board is of the opinion that the person complained against has not engaged and is not engaging in any unfair labor practice affecting commerce, then it states its findings of fact and issues an order dismissing the complaint (Sec. 10 (c)).

The orders of the Board are not self-enforcing, and violation of them carries no penalty. The Board may, however, petition an appropriate Circuit Court of Appeals for the enforcement of its order. The Board then files with that court a transcript of the entire record of the proceedings, including all the testimony and the findings and order of the Board. The court has power to make

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a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the Board. The findings of the Board as to the facts, if supported by evidence, are conclusive (Sec. 10 (e)).

Any person aggrieved by a final order of the Board may likewise obtain a review thereof in the appropriate Circuit Court of Appeals by filing a petition praying that the order be modified or set aside. In such a case the person aggrieved files a transcript of the record and the court proceeds in the same manner and with the same powers of review as in the case of petitions by the Board to enforce its orders (Sec. 10 (f)).

By Section 11 the Board is given certain investigatory powers for the purpose of all hearings and investigations which it deems necessary and proper for the exercise of its powers under Sections 9 and 10.

By Section 6 the Board is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act. The regulations made and published by the Board are set forth in the record at pp. 281–298. They have subsequently been republished, as amended, in the Federal Register of April 28, 1936, at pp. 321–325. They relate exclusively to the procedural and administrative details of the Board's functions, and no penalty attaches to their violation. No question concerning these regulations is involved in any of the cases now pending.

STATEMENT

In accordance with the procedure outlined above, on November 7, 1935, the American Newspaper Guild, a labor organization (R. 432), filed a charge with the Board (R. 10–11), and the Board, on December 4, 1935, issued a complaint and notice of hearing against the petitioner (R. 12–16). The complaint in outline alleged that petitioner, a membership corporation organized under the laws of New York, was engaged in the purchase, collection, receipt, compilation and formulation of intelligence from within and outside continental United States, and in the sale, distribution, and transmission of the same throughout the United States; that petitioner had engaged in unfair labor practices within the meaning of subsections (1) and (3) of Section 8 by discharging and refusing to reinstate Morris Watson, employed by petitioner in its New York City office in an editorial capacity, because of his membership and activity in the American Newspaper Guild, and that petitioner had thereby engaged in unfair labor practices "affecting commerce" as defined in the Act (R. 12–14).

Petitioner, reserving its constitutional objections, filed an answer to the complaint (R. 16–21). It admitted substantially [1] the allegations relating to the nature of its business, and it admitted that

[1] Petitioner did not admit the allegation that it "sold" the intelligence gathered by it to its "member-subscribers and others."

it had discharged and refused to reinstate Morris Watson but denied that it had so done for the reasons alleged (R. 18).

A hearing was held in New York City on April 7 and 8, 1936, before Charles E. Clark, Dean of the Yale Law School, the trial examiner designated by the Board. Petitioner moved to dismiss the complaint on constitutional grounds (R. 50, 412). The motion was overruled by the trial examiner on all grounds except the issue of interstate commerce (R. 54), and after the introduction of evidence on that point the motion was also dismissed on that issue (R. 182). Counsel for petitioner appeared only specially for purposes of the motion (R. 54). Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon all the issues was afforded to all parties.

On April 23, 1936, the trial examiner filed an intermediate report, finding that petitioner discharged Watson because he joined and assisted the Guild and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection, thereby interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act and discouraging membership in the Guild; that Watson and the other editorial employees of petitioner at its New York office were directly engaged in interstate and foreign commerce by facilitating and making possible the flow of news throughout

this and other countries; and that any interference with or cessation of such activities would hamper, impede, and interfere with such commerce and cause a break in the flow of foreign and domestic news which, if not repaired or overcome, would seriously impede, if not prevent, the issuance of newspapers in all parts of the country. The trial examiner concluded that petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7), of the Act (R. 27–45). He recommended that the Board issue an order requiring petitioner to cease and desist from interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. He recommended further that Morris Watson be reinstated in his former position and made whole for any loss of pay suffered by reason of his discharge (R. 45).[4]

Petitioner neither complied with nor filed objections to the intermediate report. In accordance

[4] The trial examiner also recommended (R. 44) that petitioner "cease and desist from refusal to bargain collectively" with the American Newspaper Guild. This recommendation was not adopted by the Board because the complaint did not allege any violation of Section 8, subsection (5) (R. 418).

with its Rules and Regulations (Art. II, Sec. 34; R. 289) the Board thereupon proceeded to a decision, and on May 21, 1936, issued its findings of fact (R. 419–432) and order (R. 432–433).

The Board's findings on the merits, with supporting references to the evidence in the record, may be briefly summarized as follows:

Morris Watson has been a newspaper man since 1923, serving on various newspapers before he entered petitioner's employ in 1928, at its Chicago office (R. 183, 184). There he covered important assignments in reporting and rewriting news, and won praise from an official, who, on being transferred to the New York office, secured Watson's transfer there in 1930 (R. 185, 186, 247, 248). At the New York office Watson likewise covered major assignments, was complimented for the excellence of his work, and received an increase in salary (R. 186 *et seq.*, 217, 248; 424–425).

The American Newspaper Guild was organized in 1933 for editorial employees and reporters of press associations and newspapers (R. 258). It is a national labor organization with local guilds in about 70 cities, including New York City (R. 195, 264, 350 *et seq.*, 383 *et seq.*; 423–424). Watson joined the American Newspaper Guild at its inception, in November 1933 (R. 194). He became vice president for wire services, a position he held at the time of his discharge by petitioner; and he assisted in organizing The Associated Press unit, of

which he became chairman (R. 195). He was a very active member in the parent body and in the New York Guild (R. 195–200, 211, 222). Watson was also very active in the Associated Press unit of the Guild (R. 200, 202–203, 229; 425–426, 429).

Throughout the period of Watson's Guild activity, petitioner made clear to him that it disapproved of the Guild, of his activities in its behalf, and of such activity by newspaper employees generally (R. 197, 200, 203, 217, 218; 425, 428). Because of that activity, a foreign assignment was denied him, and on two occasions he was punished by being transferred to work for which he was not suited either by temperament or experience (R. 200, 203, 209–210, 216, 218–223; 425–428). Nevertheless, this and other special work done by him was satisfactory, and in important instances in January and September 1935 was praised by petitioner's general manager, wire editors, or member newspapers (R. 213–214, 224, 226, 227, 228; 427–428).

In July 1934 Watson sponsored and secured the passage by the Guild unit of a resolution for collective bargaining with petitioner, particularly with a view to securing a five-day week instead of the six-day week then in force (R. 200; 425–426). Upon the receipt of a letter signed by the Executive Secretary of the Guild and by Watson, asking for an appointment for this purpose, petitioner's officers induced the members of the Guild unit, over Watson's protest, to suspend the resolution.

Thereupon petitioner granted its editorial employees the five-day week (R. 201–202, 205, 206, 207; 426). On October 7, 1935, petitioner notified the editorial employees that the five-day week was withdrawn and that a six-day week was to be effective at once (R. 228; 429). On October 9 1935, once again Watson sponsored, and the Guild unit passed, a resolution calling upon petitioner to bargain collectively on this subject (R. 229; 429). On October 17, 1935, the Guild wrote petitioner for an opportunity to discuss the matter (R. 230, 347; 429). On October 18, the day on which this communication was received by petitioner, Watson was discharged (R. 233–234; 429–430).

The Board concluded that Watson was discharged and discriminated against in order to discourage membership in the Guild and that petitioner thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act (R. 430). Petitioner introduced no evidence to rebut the evidence summarized above, and rested on its contention that the Board was without jurisdiction (R. 430). The Board also made extensive findings on the nature of petitioner's business and the work of editorial employees (*infra*, pp. 29–32, 35–38), and concluded that petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act (R. 419–423, 431).

No error is assigned in this Court respecting any of the Board's findings as to the facts.

Upon the basis of these findings of fact, the Board ordered petitioner, its officers and agents, to cease and desist: (a) from discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; (b) from in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and (c) from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act. The Board further directed that petitioner take the following affirmative action, which the Board found would effectuate the policies of the Act: Offer to Morris Watson immediate and full reinstatement to his former position, without prejudice to any rights and privileges previously enjoyed by him; make him whole for any loss of pay he has suffered by reason of his discharge; and post immediately notice to its employees in its New York office stating that petitioner will cease and desist in the manner aforesaid, and keep such notice posted for a period of at least thirty days (R. 432, 433).

Petitioner stated that it would not comply with the order (R. 4). Thereupon the Board, in accordance with the provisions of Section 10 (e), petitioned the United States Circuit Court of Appeals for the Second Circuit for the enforcement of its order (R. 1–4), and filed with the court as required a transcript of the entire record, accompanied by an appropriate certificate of the Secretary of the Board (R. 8–9). The petitioner answered the Board's petition for enforcement (R. 5–7). On July 20, 1936, the court entered an order that the petition of the Board for enforcement of its order be granted (R. 445).

SUMMARY OF ARGUMENT

I

Two factors must be present in order to warrant the issuance of an order under the National Labor Relations Act. (1) The jurisdiction of the Board is limited to the prevention of certain unfair labor practices (Section 8 (1)–(5)) under circumstances in which they are found to be "affecting commerce" (Section 10 (a)) that is "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (Section 2 (7)). (2) If jurisdiction exists, there must be proof that the employer has engaged in the practices proscribed by Section 8. The second factor

was clearly proved in the present case, and no error has been assigned with respect to it.

With respect to the first factor, the precise issue here is whether the Board has jurisdiction to apply subsections (1) and (3) of Section 8 to petitioner in its relations with its editorial employees at its New York City office. We submit (A) that petitioner's operations constitute interstate and foreign commerce, and that its editorial employees at its New York City office are in or intimately associated with that commerce; (B) that as applied to interstate enterprises, the provisions of the Act here involved bear a reasonable relation to the safeguarding of commerce from injury or interruption and are consequently proper exercises of the commerce power; and (C) that these provisions of the Act may be properly applied here.

A. The business of petitioner, a world-wide news-gathering and news-transmitting association composed of newspapers or persons representing newspapers, plainly constitutes interstate and foreign commerce. The power of Congress over interstate commerce is sufficient to cope with problems raised by each new form of intercommunication among the States. *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9–10; *Gibbons* v. *Ogden*, 9 Wheat. 1, 189. Petitioner's business is merely "a special form or instance of interstate communication" (R. 441). Assuming, *arguendo*, that petitioner does not *sell* news, the fact is not

material on the question of Congressional authority. *Caminetti* v. *United States,* 242 U. S. 470; *United States* v. *California,* 297 U. S. 175, 183.

Morris Watson, the employee involved in the present case, was an editorial employee in petitioner's New York City office, and was engaged at various times in the "filing" or "re-writing" of news coming into and going out of that office. We submit that in the light of the facts with respect to the character of this work, and with respect to the integral relationship of the New York office to the whole of petitioner's interstate and foreign system, the Board was correct in finding that the editorial employees at that office were either in, or intimately and directly connected with interstate commerce.

B. The provisions of subsections (1) and (3) of Section 8 bear a reasonable and direct relation to the protection of interstate commerce from industrial strife, and are, consequently, valid exercises of the power of Congress over interstate commerce.

There can be no doubt that industrial strife in interstate enterprises constitutes a burden on interstate commerce with which Congress may deal. This is conclusively demonstrated by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548; *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330, 369. This conclusion is not in conflict with the statement in *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 308, that "the relation between employer and employee is a local relation", for

without question Congress may control even local activity when control will assist in removing a burden or injury to commerce. *Schechter Corp.* v. *United States*, 295 U. S. 495, 544.

Nor can there be doubt that subsections (1) and (3) of Section 8 are a reasonable means of eliminating that burden. The decisions of this Court, the investigations of numerous commissions of inquiry, the experience of the Federal Government, and the findings of Congress in this Act (Section 1) are in accord in the conclusion that these provisions will not only eliminate the causes of industrial strife arising from attempts of employees to organize and establish the procedure of collective bargaining, but will also, by affording a basis for amicable adjustment, reduce industrial strife arising out of the substantive terms of the employment contract.

C. We submit, therefore, that subsections (1) and (3) of Section 8 were properly applied to petitioner in this case. Indeed, the decision in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, seems conclusive, for there is no essential difference between the statutes, the employers, or the employees in that case and the present one. Moreover, apart from that case, industrial strife in petitioner's New York City office would seriously and directly burden interstate commerce, and involve, at least, difficult and expensive rerouting of news, and at most, a paralysis of much of petitioner's system. Furthermore, the work is

carried on at a "throat" of a well-defined "flow" or "stream" of commerce, and is therefore even more clearly within the Federal power to regulate and control. *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1.

Finally, even if it be admitted, *arguendo,* that editorial employees in the New York office are engaged in some occupation analogous to "production" or "manufacturing", we submit that the Act was properly applied under the principles discussed in the Brief for the Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*

II

A. The validity of the order of the Board under the Fifth Amendment is, we submit, settled by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. The facts and the statutory provisions there involved, in every respect material to the due process issue, substantially correspond with those of the present case. The cases of *Adair* v. *United States,* 208 U. S. 161, and *Coppage* v. *Kansas,* 236 U. S. 1, upon which petitioner relies, were vigorously urged by the railroad in the *Texas & New Orleans* case, *supra,* and were held inapplicable; consequently they must be equally inapplicable here.

The *Texas & New Orleans* case is not to be distinguished on the ground that the decision there

enforced merely a contempt order, for the Court put its decision squarely on the ground that the Act itself was constitutional. Nor may the case be distinguished on the ground that the Railway Labor Act prohibited interference with representatives only for the purposes of proceedings in arbitration and mediation, for that Act clearly included a distinct prohibition against coercive measures in the choice of representatives and in the exercise by employees of their rights of self-organization for purposes of collective bargaining.

B. Moreover, apart from the *Texas & New Orleans* case as a controlling precedent, the provisions of the present Act here involved are reasonable and consonant with due process. Clearly the procedural machinery of the Act is reasonable and well adapted to achieve its purpose, and likewise, we submit, the prohibition on discriminatory discharges imposes no restriction on the normal exercise of the employer's right to hire and discharge employees. Employees have an unquestioned right to organize for the advancement of their interests; indeed, such organization is a vital necessity. *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 209. This right is destroyed by the unrestricted freedom of an employer to discharge employees because of membership in a labor union or participation in its affairs. Thus the present Act merely safeguards the recognized and essential liberty of employees by a limited restriction on the employer's power of discharge. Similar curtail-

ments of employer's liberty have repeatedly been sustained by this Court. Moreover, the principle upon which this Act is based has not only been developed over a half century of experience, but it is also the established present policy of both Congress and many of the States. Finally, it should be noticed that the Act is, in fact, very limited. It does not compel organization, or the "closed shop." It does not interfere with the employer's normal conduct of his business. It does not fix wages or hours, or provide for compulsory arbitration of labor disputes. And it does not weaken any of the existing laws protecting employers against illegal action of employees or labor organizations. Cf. *Local No. 167* v. *United States,* 291 U. S. 293.

III

That part of the order of the Board which requires petitioner to make Watson, the discharged employee, whole for loss of pay suffered by reason of the discharge does not deprive petitioner of a jury trial in violation of the Seventh Amendment. A similar order was sustained in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Moreover, the Seventh Amendment applies only to rights and remedies as they were generally known and enforced at common law, *Shields* v. *Thomas,* 18 How. 253, 262, and consequently has no application here. *Pennsylvania Federation* v. *Pennsylvania R. Co.,* 267 U. S. 203, 210. The order for back pay is merely a supple-

ment to a decree essentially injunctive in character. Cf. *Clark* v. *Wooster*, 119 U. S. 232.

IV

The order of the Board does not violate the guarantee of the freedom of the press contained in the First Amendment. A valid statute of general application does not become invalid when applied to the press. *Robertson* v. *Baldwin*, 165 U. S. 275, 281; *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268. Clearly the present Act does not discriminate against the press, nor constitute a device to limit its freedom under the guise of a regulation of commerce. Nor does it curtail the privilege of petitioner to discharge employees who exhibit actual bias in editing the news. Petitioner is accordingly reduced to the contention that a member of a labor organization must be conclusively presumed to be biased, a proposition which is obviously unsound.

V

The application of the Act to persons other than petitioner, and certain provisions of the Act other than those here applied to petitioner, are not in issue in the present case. Consequently, the validity of the present order is not to be determined by the validity of those other provisions or applications.

A. That no question of constitutional law will be adjudged in advance of the necessity of deciding it

is a salutary principle of constitutional law. *Abrams* v. *Van Schaick*, 293 U. S. 188. For this reason petitioner, who has not been injured by other application or provisions of the statute, is not in a position to question their validity. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324-325.

B. In any event, the applications and provisions of the Act to which petitioner objects are clearly separable.

1. The Act is not invalid as applying to all industry and all employees. The jurisdiction of the Board is limited by Section 10 (a) to unfair labor practices "affecting commerce", as defined in Section 2 (7) of the Act. Should the Board err in applying the Act, the courts will correct the error by holding that the order was unauthorized by the Act, not that the Act exceeded the commerce power, for it is clear from the terms of the Act and its legislative history that it was not intended to apply beyond the limits of the commerce power as judicially defined. Finally, it cannot be urged that the Act is invalid because it has been, in practice, applied to all industry. That contention is based upon a complete misapprehension of the facts. We submit, therefore, that unlike the statutes in the *Trade Mark Cases*, 100 U. S. 82, and *Employers' Liability Cases*, 207 U. S. 463, the present Act is applicable on its face only to matters that are within the power of Congress.

2. Nor is the Act invalid because of the alleged invalidity of Section 8 (5). That subsection of Section 8, dealing with the refusal of an employer to bargain collectively, is not "inseparably connected" with the first four subsections. *Loeb v. Columbia Township Trustees*, 179 U. S. 472, 490; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312–313. Complete support for this position is afforded by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. Moreover, it seems clear that Congress would not have intended that the whole Act should fall if Section 8 (5) were to be declared unenforcible. The presumption of separability arising from the separability provision (Section 15) is buttressed not only by the separate listing of the five proscribed labor practices, but also by the fact that a substantial amount of protection of collective bargaining may be obtained by prohibition against interference with organization and free choice of representatives, even if the obligation to bargain may not itself be enforced. The decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, is, therefore, not in point here.

ARGUMENT

I

THE APPLICATION OF THE NATIONAL LABOR RELATIONS ACT TO PETITIONER IS A VALID EXERCISE OF THE POWER OF CONGRESS TO REGULATE COMMERCE WITH FOREIGN NATIONS AND AMONG THE SEVERAL STATES

The validity of an order under the National Labor Relations Act depends upon two considera-

tions. First, the jurisdiction of the Board is limited to the prevention of the five specified unfair labor practices under circumstances in which they are found to be "affecting commerce" (Section 10 (a)), that is, "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (Sec. 2 (7)). Second, if jurisdiction exists, there must be proof that the employer has restrained or coerced its employees in their exercise of rights affirmed by Section 7 of the Act, by engaging in one or more of the unfair labor practices condemned by Section 8.

This second consideration need not be discussed at length. The Board made detailed findings (R. 423–430) with respect to the unfair labor practices of petitioner (see pp. 12–14, *supra*), and concluded that Morris Watson, the employee here involved, had been discharged under such circumstances as constituted a violation of subsections (1) and (3) of Section 8 of the Act.[8] Petitioner offered no evi-

[8] The evidence clearly shows that Watson was one of petitioner's most able editorial employees (R. 185–189, 217, 247–249); that Watson was very active in securing improved conditions for newspaper workers through the American Newspaper Guild (R. 194, 195–200, 211, 222); and that petitioner repeatedly stated its opposition to the Guild and Watson's activities in this connection (R. 197, 200, 208, 217, 218). Petitioner makes much of the fact that it retained Watson in its employ for two years while his Guild activity was well known, and that other Guild members are still employed (Br. pp. 91–92). But the evidence shows that petitioner per-

dence on the question, and it does not attack the findings as without support in the evidence—the only basis upon which they may be overthrown. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Texas & New Orleans Ry. Co.* v. *Brother-*

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sistently sought to persuade and coerce Watson to refrain from such activity during this period, by flattery (R. 217), by offers of advancement (R. 197, 203–204, 216, 217), and by transfers to unpleasant and unsuitable work (R. 209–210, 216, 218–223). The inference from all the evidence is plain that petitioner discharged Watson when it did because he was largely responsible for the renewed efforts by the Guild unit to bring about collective bargaining with petitioner on the issue of the five day week, which had been withdrawn by petitioner without notice (R. 228–230, 233–234, 347). He was discharged on the day petitioner received a communication from the Guild requesting a conference for the purpose of negotiation on this issue (*Ibid*). On a similar occasion the previous year, petitioner had taken other effective steps to persuade and coerce the Guild membership to refrain from designating representatives for collective bargaining on this issue (R. 200–209).

In order to discourage and stamp out the collective activity of its employees, it was not necessary for petitioner to discharge every Guild member. Watson was the Guild's vice-president for wire services, was an organizer and the original chairman of the Associated Press unit, and was the vital, aggressive force in the unit. Petitioner's campaign in opposition to the Guild, including the discharge of Watson, was intended and for a time had the actual effect of discouraging Guild membership and activity among the editorial employees (R. 202, 234, 243, 426, 430).

Petitioner's suggestion that the quality of Watson's work had fallen below his own standard of capability (Br. p. 91) is utterly groundless, and is refuted by the important special assignments given and satisfactorily completed by him during 1935 (R. 213–214, 224–228, 427–428).

hood of Railway Clerks, 281 U. S. 548; *Pick Mfg. Co.* v. *General Motors Co.*, 299 U. S. 3. No error is assigned in this Court respecting any issue on this phase of the case.

There remains only the first issue, that of jurisdiction. The precise question is whether the Board, and the court below, erred in applying Section 8, subsections (1) and (3) of the Act to the petitioner in its relations with its editorial employees at its New York office. Petitioner argues that the Act is under no circumstances a valid exercise of the commerce power, and that in any event it may not validly be applied to petitioner's editorial employees who, on petitioner's theory, are engaged in operations analogous to production or manufacturing (Br. pp. 19 *et seq.*). With respect to the issue of jurisdiction, we will show: (A) that petitioner's operations constitute interstate and foreign commerce, and that the work of the editorial employees is in or intimately associated with that commerce; (B) that as applied to interstate enterprises, the protection of the rights of employees affirmed in Section 7 of the Act by the prevention of the unfair labor practices set forth in Section 8, subsections (1) and (3), bears a reasonable and direct relation to the safeguarding of interstate commerce against interruption and injury due to industrial strife, and consequently is a proper exercise of the commerce power; and (C) that those provisions of the Act may validly be applied under the circumstances of this case.

A. *Petitioner's Operations Constitute Interstate and Foreign Commerce and the Editorial Employees Here Involved Are In or Intimately and Directly Associated With Such Commerce*

1. The Nature of Petitioner's Operations

The Board's findings as to the character of petitioner's extensive interstate and foreign operations (R. 419–421) are based principally upon testimony of one of petitioner's officers and certain documents and publications of petitioner. No error has been assigned in this Court respecting any of these findings. Briefly, these findings, supported by references to the evidence in the record, are as follows:

The Associated Press is a membership corporation organized under the laws of the State of New York (308, 419). It is a cooperative association of newspapers or persons representing newspapers. It gathers information and intelligence from its members and from other sources in all parts of the United States and in foreign countries, and distributes the information so gathered to its members (R. 309). There are at present about 1,350 members, including 1,200 daily newspapers in the United States, practically all of which operate for profit (R. 56, 171, 308–309; 419–420).

The principal office of petitioner is in New York City (R. 61). However, it has its own representatives in important capitals and cities in the United States and in other parts of the world (R. 62, 140,

309; 420; Bd. Exh. 4, pp. 3–19). An affiliate, The Associated Press of Great Britain, with a branch office in Paris, obtains pictures of news events abroad to be supplied to petitioner (R. 57). Petitioner has another affiliate located in Berlin (R. 57), and has reciprocal arrangements with important news agencies in foreign countries for the interchange of news: with Reuter (R. 97), the Canadian Press (modeled after petitioner) (R. 70, 71) and Domei-Tsuchin-Sha, a Japanese news bureau (R. 163).

Petitioner has division points throughout the United States, each of which is responsible for the collection of news from its territory and for its distribution. These divisions are the Eastern, with headquarters in New York City; the Southern—Atlanta, Georgia; the Central—Chicago, Illinois; the Western—San Francisco, California; and the Southwestern—Kansas City, Missouri. Each division has regional offices and member newspapers reporting to it. (R. 106–110; 420; Bd. Exh. 4.) In addition, petitioner has a special bureau at Washington, D. C., and a Foreign Service, operating from its New York City office, with offices, staffs, and correspondents in Africa, Asia, Europe, and Central and South America (R. 64, 66, 88; 420; Bd. Exh. 4). The control of news is extremely decentralized or "broken-down" (R. 64 *et seq.*, 75, 85, 86, 140; 420). Each collecting unit—regional office, division point, member newspaper—determines the value to other regions, divisions, etc., of

each item of news collected by or coming to it and sends each item along to other points or distributes it according to its judgment of the item's interest (R. 85, 86, 88, 89, 94, 140; 420–421). Consequently, the individual editorial employee, no matter where he may be situated, has a measure of responsibility for the effective functioning of the entire system (R. 421).

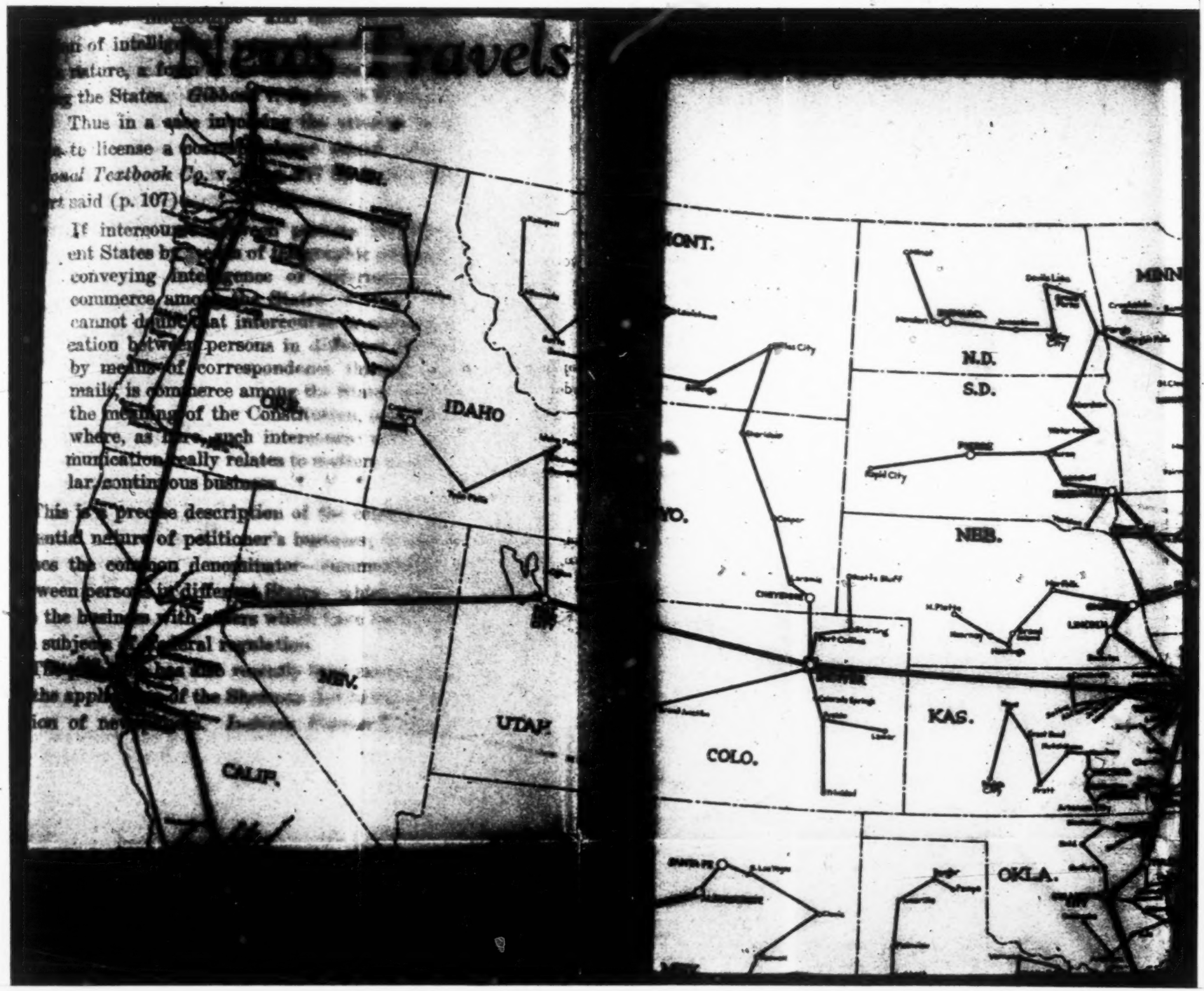
The usual method of communication is by "leased wires" (*i. e.*, special service by contract with the Western Union Telegraph Company, the American Telephone & Telegraph Company, and the Pacific Telephone & Telegraph Company), although all forms of communication—telephone, messenger, wireless, mail—are utilized (R. 91 *et seq.*, 96; 421; Bd. Exh. 4). From each division point there stretches out to the East, the West, the North and the South, trunk telegraph wires which are the principal intake and feeding lines for the division and which provide interdivisional communication. Subsidiary regional circuits tie into these primary circuits (R. 88, 93–95, 105–107, 109 *et seq.*; 421). There is thus a continuous and constant interchange of news among the various members of the Associated Press (described at R. 88–95), requiring 24-hour coverage in three shifts of editorial employees at division points such as New York (R. 69; 422). The "number of words daily received and transmitted at each of the more important offices is over 200,000 or the equivalent of 125 columns of the average newspaper" (R. 101;

420). Petitioner has a registered trade-mark which it declares is used by it "in commerce among the several states of the United States" (R. 341).

The attached map, recently published by petitioner as an advertisement (*Editor and Publisher*, Apr. 25, 1936, pp. 106–107), illustrates the data in the record concerning petitioner's transcontinental wire system.

This business plainly constitutes interstate and foreign commerce. In upholding the existence of a power in Congress to regulate the telegraph companies, this Court has stated that the power to regulate interstate commerce is sufficient to cope with the problems raised by each new form of intercommunication and commerce among the States. *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9–10. See also *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105. This principle has recently supported Federal regulation of radio communication. *Federal Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266, 279. Cf. *Fisher's Blend Station* v. *Tax Commission*, 297 U. S. 650, 654.

It seems beyond doubt that the business of petitioner, "which merely is a special form or instance of interstate communication", as the court below stated (R. 441), is as much a subject of appropriate Federal regulation as is communication in general. Indeed this Court has made it clear that there is nothing special or peculiar in the standard communication businesses. Their inclusion in the


News Travels
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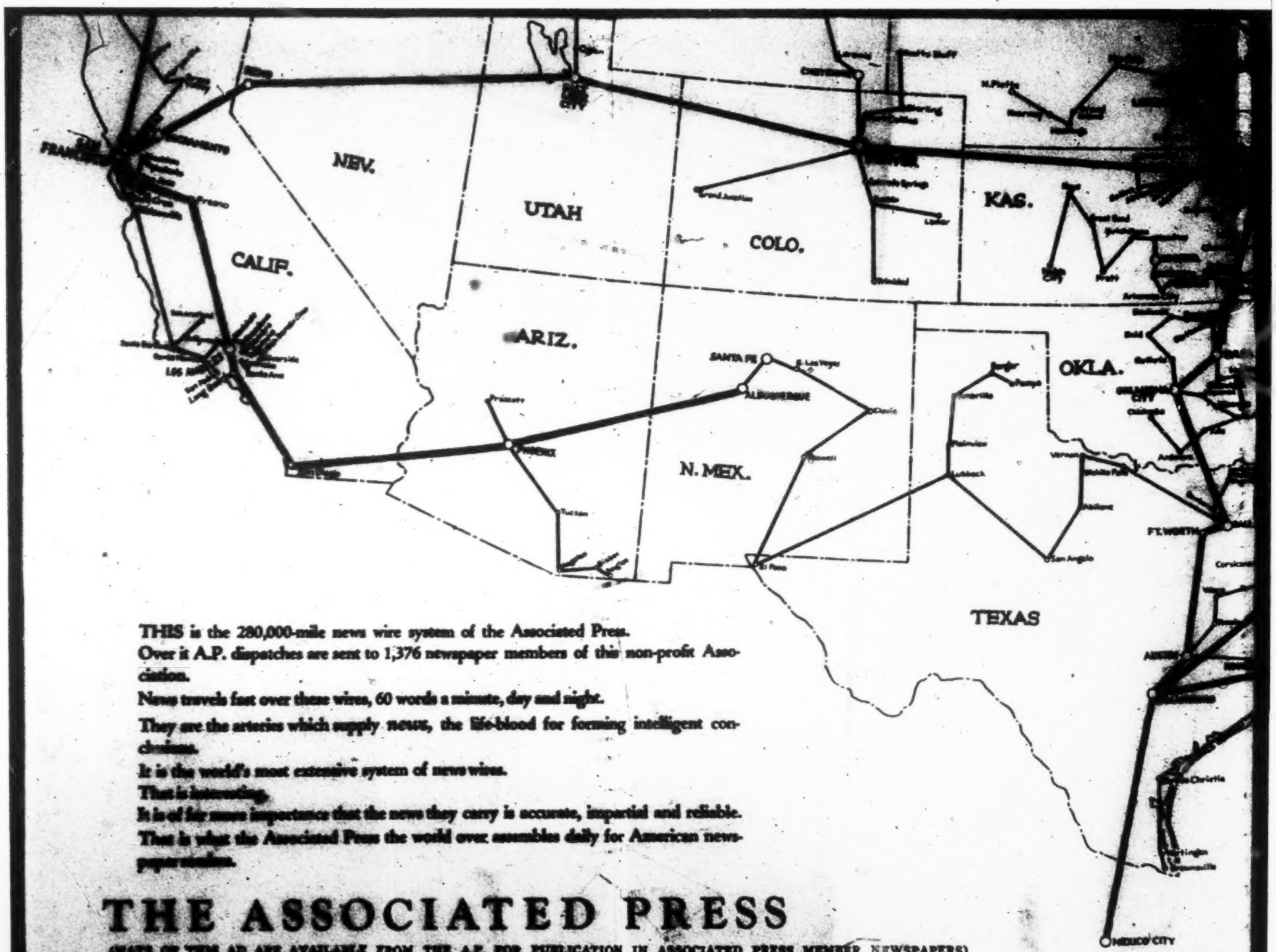


THIS is the 280,000-mile news wire system of the Associated Press.

Over it A.P. dispatches are sent to 1,376 newspaper members of this non-profit Association.

News travels fast over these wires, 60 words a minute, day and night.

They are the arteries which supply news, the life-blood for forming intelligent conclusions.

It is the world's most extensive system of news wires.

That is interesting.

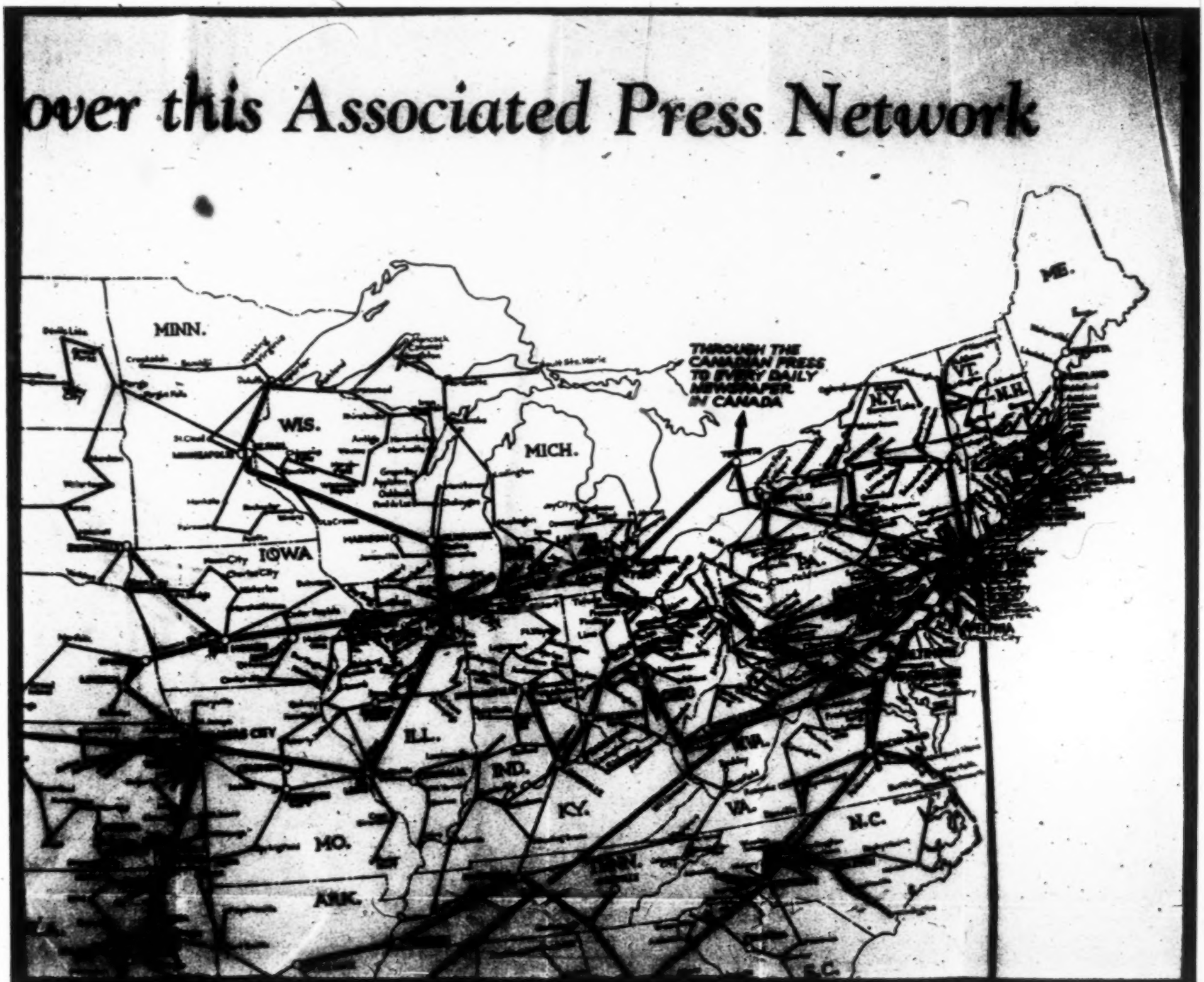
It is of far more importance that the news they carry is accurate, impartial and reliable.

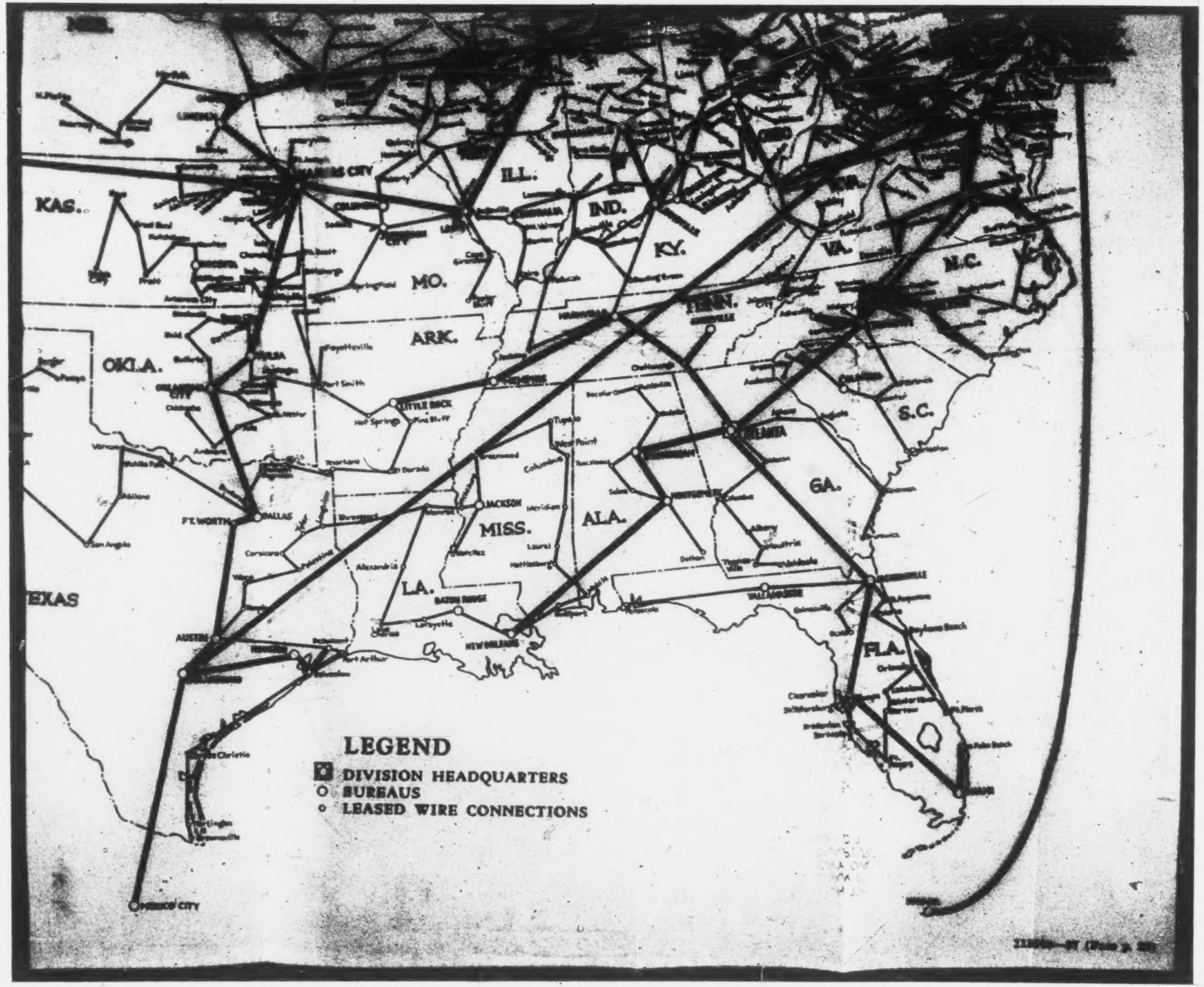
That is what the Associated Press the world over assembles daily for American newspaper readers.

THE ASSOCIATED PRESS

(MATS OF THIS AD ARE AVAILABLE FROM THE A.P. FOR PUBLICATION IN ASSOCIATED PRESS MEMBER NEWSPAPERS)

over this Associated Press Network

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LEGEND
DIVISION HEADQUARTERS
BUREAUS
LEASED WIRE CONNECTIONS

concept of commerce is based on the broad principle laid down by Chief Justice Marshall, that commerce is "intercourse", and that the "transmission of intelligence" across the state lines, is, in its nature, a form of intercourse or commerce among the States. *Gibbons* v. *Ogden*, 9 Wheat. 1, 189. Thus in a case involving the attempt by a State to license a correspondence school (*International Textbook Co.* v. *Pigg*, 217 U. S. 91) this Court said (p. 107):

> If intercourse between persons in different States by means of telegraphic messages conveying intelligence or information is commerce among the States * * * we cannot doubt that intercourse or communication between persons in different States, by means of correspondence through the mails, is commerce among the States within the meaning of the Constitution, especially where, as here, such intercourse and communication really relates to matters of regular, continuous business * * *.

This is a precise description of the central and essential nature of petitioner's business; it establishes the common denominator—communication between persons in different States—which identifies the business with others which have been held the subjects of Federal regulation.

The principle has also recently been exemplified in the application of the Sherman Act to the circulation of newspapers. *Indiana Farmer's Guide*

Publishing Co. v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 276. The business of petitioner is much more intimately a matter of interstate commerce than the operation of the farm journals which were the subject of that case. Petitioner has itself emphasized (R. 309), and a sampling of leading newspapers confirms (Guild Exhibits 1–10, incl.; R. 431), that a press service is "essential to the conducting of modern daily newspapers." Petitioner performs for more than half the daily newspapers throughout the United States, as its special function, the vital operations of interstate and foreign collection and dissemination of news (supra, p. 29). Petitioner claims to be "the greatest clearing house for news in the world" (Bd. Exh. 4, p. 1), and is substantially larger than competing press services in the United States.*

* Of approximately 2,000 daily newspapers in the United States, only 164, with an average circulation of less than 3,000 and a combined circulation of slightly over 1 per cent of the total, do not use any press service. Petitioner numbers among its membership approximately 60 per cent of all daily newspapers. More important, its members have a combined circulation of about 80 per cent of the total. About 40 per cent of the country's daily newspapers use petitioner's service exclusively. Approximately 30 per cent use exclusively some press service other than petitioner, and this business is divided chiefly among three of petitioner's competitors, United Press, International News Service, and Universal Service. Of the 463 dailies using more than one press service—typically those in the more populous areas and having comparatively larger circulations—all but 51 are members of petitioner. (Compiled from data as of September 30, 1935, published in *Editor and Publisher*, Jan. 25, 1936, p. 14 *et seq.*)

Petitioner contends that it is not engaged in *selling* news and does not make a profit. These characteristics are not material on the question of Congressional authority over petitioner under the commerce clause. Cf. *Caminetti* v. *United States*, 242 U. S. 470; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *United States* v. *California*, 297 U. S. 175, 183. It is interesting to note, however, that in a case in which petitioner was granted protection of a court of equity against the unfair competition of a competing news agency, this Court described the business in terms wholly inconsistent with a non-commercial conception, stating that petitioner and its competitor, the International News Service, "are competitors in the gathering and distribution of news and its publication for profit in newspapers throughout the United States." *International News Service* v. *The Associated Press*, 248 U. S. 215, 229. See also R. 309, 316. Moreover, it is wholly immaterial that the "title" to the news may remain in petitioner during its interstate transmission. *The Pipe Line Cases*, 234 U. S. 548, 560; *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, 28.

2. The Work of the Editorial Employees of Petitioner Is In, or Intimately and Directly Connected With, Petitioner's Interstate and Foreign Commerce

Morris Watson, who was found to have been discharged under circumstances constituting unfair labor practices under the Act, was an edi-

torial employee in petitioner's New York City office. He was engaged at various times in the "filing" of outgoing news[1] (R. 191, 209; 427), and in the revision or "re-writing" prior to distribution of news coming in over the wires (R. 214, 224; 424). At the time of his discharge he was engaged in the latter activity (R. 224; 428). The Board found that the work of the editorial employees is carried on in the course and current of interstate and foreign commerce, is an integral part of the operations of instrumentalities of such commerce, and facilitates and makes possible the flow of news from place to place throughout this country and other countries (R. 423, 431).

The record fully supports these findings. New York City is the principal office of petitioner (R. 61; 420). This office is the headquarters of the eastern division, and through it also is operated a Foreign Service, with offices, staffs, and correspondents abroad (R. 64, 66, 88; 421). Practically all news from Europe passes through this office (*Ibid*). As news is received at the New York City office over the world-wide communication system described above, it is edited by editorial

[1] An employee engaged in "filing" has charge of a wire serving a particular section of the country. He receives copy from other wires or from the various desks where it has been rewritten, edits the copy according to the interest of his particular circuit and hands it to an operator for transmission. In the case of an important dispatch, the entire operation may not take more than one or two minutes (R. 191, 193, 423). See further, *infra*, pp. 37–38.

employees under the direction of supervising editors and transmitted throughout the division and to the headquarters of other divisions to the extent warranted by the news (R. 88, 90; 422). The New York City office thus receives and dispatches news from and to all parts of the world in addition to the news from the Northeastern and Middle Atlantic States. Much of the material passing through the editorial staff in the New York City office receives little or no treatment at all, such as wire photos (R. 60–61, 126) and news which has been edited and digested at other division points (R. 85). Even when there is comparatively more editorial treatment of the news items, that which leaves the office is fundamentally that which came into it (R. 68).

The editorial employees in the New York City office, of whom Morris Watson was one, receive, rewrite, and file for transmission the news coming into and going out of the office. It is this editorial staff that keeps the flow of news moving. These employees, however, do not conduct the mechanical operations of the transmission of the news. This is done by the Traffic Department (R. 83; 423). An executive news editor, assisted by supervising editors and editorial employees, has general charge of the revision of the news as it is received from the filing editors in immediate charge of the wires to and from various places. The filing editors supervise the news as it goes out on trunk or primary circuits and the secondary wires from New York City. Such editors determine what news, from the

vast amount of copy delivered to them, is to be sent on their respective wires; they supervise its rewriting as they determine to be desirable for the uses of their respective circuits, and its delivery to teletypewriter operators for transmission over such wires (R. 84, 111, 119, 191; 422).

The editors and editorial employees must be able to determine the news value of items and to rewrite copy with speed and the utmost accuracy, so that in the case of important news all the work on a particular item may be completed within a few minutes (R. 67, 68, 69, 70, 101; 422). Thus a story from abroad may be received, rewritten, and sent out over the wires in from 12 to 20 minutes, and an unusually important item, such as the death of the King of England, would be sent out in half that time (R. 68; 422). Leads of from 2 to 15 minutes in the transmission of important news reports have been sufficient to constitute news "beats" (R. 192). Less important news is handled in a more leisurely way, but all news is perishable and becomes valueless for the purposes of petitioner as soon as it becomes generally known through competing press agencies or otherwise (R. 147, 148, 310; 423).

The court below found that the work of Watson and of the other editorial employees is an important factor in petitioner's system of interstate and foreign intercourse and that "the editing of a message in interstate commerce is not a break in continuity equivalent to manufacturing a finished

product from raw materials" (R. 444). The editorial employees referred to are engaged "in or about commerce", or in direct connection with the flow of commerce; they are not manufacturing employees engaged "exclusively in producing a commodity." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 305, 308. As petitioner's official put it, "basically, the Associated Press is an exchange of news system. It is incoming and outgoing, incoming and outgoing, day in and out" (R. 88). The work done upon the news by the editorial employees is an important, and indeed an integral and indivisible part of the function of petitioner's world-wide enterprise for the collection and transmission of news. To say that "the analogy is exact between these employees and the employees of a manufacturing plant engaged in transforming the raw materials into a finished article" (Pet. Br. p. 45) is to distort the long accepted sense of those words and invokes an analogy entirely unfitted to a business which describes itself as devoted to the accurate, impartial, and speedy gathering, exchange, and transmission of news (R. 308–309).

B. Subsections (1) and (3) of Section 8 of the Act, As Applied to Interstate Enterprises, Bear a Reasonable and Direct Relation to the Protection of Interstate Commerce from the Burden of Industrial Strife, and Consequently Are a Valid Exercise of the Commerce Power

In view of petitioner's contention that the National Labor Relations Act is under no circumstances a valid exercise of the commerce power, we consider that question before passing to the validity of the Act's application under the circumstances of this case.

The basic validity of the Act presents two problems. First, does industrial strife in interstate enterprises constitute a burden on interstate commerce which Congress may remove or prevent? Second, does the present Act invoke appropriate means for the mitigation or elimination of that burden?

1. Industrial Strife in Interstate Enterprises Constitutes a Burden on Interstate Commerce Which Congress May Remove or Prevent

That industrial disputes in an industry or business engaged in interstate commerce may and very frequently do burden and interrupt the flow of such commerce is a fact of common knowledge. A strike or lockout ordinarily means a complete or partial suspension of business. That such an effect is so direct and substantial as to be within the scope of Congressional power has been

settled by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, where this Court in a unanimous opinion upheld Section 2, third of the Railway Labor Act of 1926, which prohibited interference with the self-organization of employees and their free choice of representatives for collective action. The Court said (p. 570):

> We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact "all appropriate legislation" for its "protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); to "foster, protect, control and restrain" (*Second Employers Liability Cases*, 223 U. S. 1, 47). Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation.

The Railway Labor Act was thus upheld by this Court "upon the express ground that to facilitate the amicable settlement of disputes which threatened the service of the necessary agencies of interstate transportation tended to prevent interruptions of service and was therefore within the delegated power of regulation." *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369. It is apparent that in like fashion industrial strife threatening the operation of various other forms

of commercial intercourse among the States, such as motor and water transportation, pipe lines, freight agency services, and communication by wireless, telephone, telegraph or radio, would directly affect interstate commerce and hence fall within Congressional power to mitigate or eliminate. See *Bradley Lumber Co.* v. *National Labor Relations Board,* 84 F. (2d) 97, 99 (C. C. A. 5th), certiorari denied, October 12, 1936, No. 153; *National Labor Relations Board* v. *National N. Y. Packing Co.,* 86 F. (2d) 98 (C. C. A. 2d); *Agwilines, Inc.* v. *National Labor Relations Board,* decided December 22, 1936 (C. C. A. 5th).

Petitioner's contention that the principle of the *Texas & New Orleans* case is limited to instrumentalities of commerce (Br. pp. 56–57) cannot stand. Such instrumentalities are not the only form of interstate commerce, and cases under the Sherman Act make clear that the Federal power extends to the elimination of labor disputes burdening interstate commerce in other forms. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Loewe* v. *Lawler,* 208 U. S. 274; *Duplex Printing Co.* v. *Deering,* 254 U. S. 443; *Bedford Cut Stone Co.* v. *Stone Cutters' Ass'n,* 274 U. S. 37. It cannot be questioned, therefore, that Congress acted within its constitutional power in adopting special preventive means to avoid such burdens at least where, as Congress found in Section 1 of the Act, they are caused by industrial strife "(a) impairing the efficiency, safety, or operation of the

instrumentalities of commerce", or "(b) occurring in the current of commerce." Nor can it be contended that a showing of a specific intent to affect commerce is necessary in each case. *Anderson* v. *Shipowners Association,* 272 U. S. 359, 363–364; *United States* v. *Patten,* 226 U. S. 525, 543; *Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548; *Industrial Association* v. *United States,* 268 U. S. 64, 81; *Stafford* v. *Wallace,* 258 U. S. 495.

The existence of a power in Congress to protect interstate commerce from these burdens is in no way inconsistent with the statement that "the relation of employer and employee is a local relation." *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 308. That statement cannot be understood as in conflict with the cases in which Congress has subjected that relationship to valid regulation. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; *Patterson* v. *Bark Eudora,* 190 U. S. 169; *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612; *Southern Ry. Co.* v. *United States,* 222 U. S. 20; *Second Employers' Liability Cases,* 223 U. S. 1; *Wilson* v. *New,* 243 U. S. 332. See also *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330, 370, and cases cited at p. 42, *supra.* Thus, on the very subject matter here involved, although it be said that the right to join a labor organization is, standing alone, a local matter, that right may be protected by Congress where its protection will assist in maintaining the

orderly conduct of interstate commerce, and in furthering the peaceful settlement of disputes which threaten it. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. Similarly, although the rates charged by commission men and local dealers in sales at stockyards may be considered as "affecting only intrastate commerce when considered alone", they may be regulated by Congress when and to the extent that their regulation is found desirable to protect interstate commerce from recurrent burdens and obstructions. *Stafford* v. *Wallace*, 258 U. S. 495, 520; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420. See also, *e. g.*, *United States* v. *Ferger*, 250 U. S. 199; *The Minnesota Rate Cases*, 230 U. S. 352.*

We submit, therefore, that beyond any question industrial strife, at least in enterprises in interstate or foreign commerce, constitutes a burden on that commerce which Congress may remove or prevent. The remaining question is whether the means employed here are appropriate to that end.

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* Of course, the existence of a power of Federal control over certain aspects of these matters does not mean that the States may not likewise regulate other aspects, for it is well established that the power of State and nation may overlap to some extent. Consequently, it cannot be urged that the power of Congress is necessarily delimited by decisions upholding state taxation or regulation. *Stafford* v. *Wallace*, 258 U. S. 495, 525; *Binderup* v. *Pathé Exchange*, 263 U. S. 291, 311; *Minnesota* v. *Blasius*, 290 U. S. 1; *Dickson* v. *Uhlmann Grain Co.*, 286 U. S. 188; *Wiloil Co.* v. *Pennsylvania*, 294 U. S. 169, 175.

2. Subsections (1) and (3) of Section 8 of the National Labor Relations Act Provide a Reasonable Means of Eliminating the Burdens on Interstate Commerce Arising Out of Industrial Strife

Industrial disputes are of two basic types. The first type arises out of employer resistance to the attempt of employees to form and maintain labor organizations, to obtain recognition of these organizations, to bargain collectively, and the like—briefly, the struggles to organize and establish the procedure of collective bargaining. The second type of dispute arises over the substantive terms of the employment contract, such as rate of wages, hours of work, or other matters of working conditions.*

Subsections (1) and (3) of Section 8 of the Act, which are the only provisions invoked against petitioner, bear upon both types of industrial controversies, by eliminating the causes of the first, and by affording a basis for the amicable and permanent adjustment of the second through the procedure of voluntary negotiation and collective bargaining conducted by freely chosen representatives of the employees.*

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* This distinction between the two basic types of labor disputes is well recognized. See Fitch, *Causes of Industrial Unrest* (1924) p. 92 *et seq.*; *Final Report of the Commission on Industrial Relations* (1916), Senate Doc. No. 415, 64th Cong., 1st Sess., Vol. I, p. 67; *Report of the Anthracite Coal Strike Commission* (1903), Sen. Doc. No. 6, 58th Cong., Spec. Sess., p. 31.

* The non-legal materials in the present brief were collected by the Division of Economic Research, National Labor Relations Board. David J. Saposs, Chief Economist;

(A) THE ACT ELIMINATES INDUSTRIAL STRIFE GROWING OUT OF THE EFFORTS OF EMPLOYEES TO ORGANIZE AND BARGAIN COLLECTIVELY BY REMOVING THE CAUSES OF SUCH STRIFE

As an inevitable outgrowth of modern business organization, employees have attempted to associate for mutual aid and protection. The gross inequality of bargaining power between the individual employee and the ordinary corporate employer has made such association, at least from the employee's point of view, of great importance. Its importance has become more and more acute with the development of modern business and its huge aggregations of capital. This Court has given full recognition to these elementary facts. *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570–571.

It is equally fundamental that interference by an employer with the efforts of the employees to exercise their liberty of association must often lead to open conflict—a strike or lock-out. If a group of employees attempts to form a labor organization, and their employer meets that effort by discharging the leaders of the movement, or by similar methods of opposition, there is no basis for adjustment except helpless submission or economic warfare.

George S. Wheeler, Associate Economist; George Brooks, Assistant Economist; Jean M. Paton, Jacob Karro, Louis R. Becker, Elizabeth T. Bliss, Junior Economists.

Issues of this sort have played a decisive part in bringing on conflicts in a great many of our industrial disturbances. A dramatic illustration arose during the World War. In April 1918, as a result of the practice of the principal telegraph companies in discharging employees for membership in the Commercial Telegraphers Union of America, some 20,000 telegraph employees voted to go on strike. The strike was postponed at the instance of the War Labor Board, which made an effort to settle the controversy. The companies refused to comply with the Board's recommendation that they desist from their practice of dismissing employees for joining the union. President Wilson publicly requested the companies to comply, but the persistent opposition of one of the companies to the union affiliation of its employees continued, and again a strike was scheduled. No procedure had been established for the enforcement of the recommendations of the War Labor Board. In order to prevent threatened paralysis of a part of the system of electrical communication, the President took control of the telegraph and telephone lines pursuant to a resolution enacted by Congress on July 16, 1918.[10]

The Pullman strike of 1894 is another typical example. According to the report of the Federal

[10] Bulletin No. 287, National War Labor Board (U. S. Bureau of Labor Statistics, 1921) pp. 24–25; Berman, *Labor Disputes and the President of the United States* (1924) pp. 142–145.

commission of inquiry appointed under the Act of 1888 (c. 1063, 25 Stat. 501), the immediate controversy between the Pullman Company and its workers concerned a reduction in wages without a corresponding change in the rental of company-owned houses in and about Chicago in which most of the employees lived. A grievance committee of the men approached the management to protest against the wage reduction. Within three or four days the outstanding leaders of the group were discharged, and a strike immediately ensued. Subsequently the management declined to negotiate with the American Railway Union, representing the employees on strike, in regard to the terms of a settlement of the matters in controversy. In consequence, the area of conflict was extended to all the railroads and their employees in and about Chicago, the most important railroad center in the country. The Commission concluded:

> The Pullman Company is hostile to the idea of conferring with organized labor in the settlement of differences arising between it and its employees.
>
> * * * * *
>
> Since the strike, withdrawal from the American Railway Union is required from those seeking work. The Company does not recognize that labor organizations have any place or necessity in Pullman, where the Company fixes wages and rents, and refuses to treat with labor organizations. The laborer can work or quit on the terms offered;

> that is the limit of his rights. To join a labor organization in order to secure the protection of union against wrongs, real or imaginary, is overstepping the limit and arouses hostility. This position secures all the advantage of the concentration of capital, ability, power, and control for the company in its labor dealings, and deprives the employees of any such advantage or protection as a labor union might afford. In this respect the Pullman Company is behind the age.[10a]

Similar reports to the effect that employer interference with employees in their self-organization and collective bargaining is a prime factor in industrial disputes have been made by various commissions of inquiry over a long period of years.[11]

More important than these single instances are the statistics for industrial disputes generally. For many years, the denial of these rights of em-

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[10a] *Report on the Chicago Strike of June–July 1894*, by the United States Strike Commission of 1894–1895 on the Pullman Strike, pp. 25–27.

[11] *Report of Anthracite Coal Strike Commission* (1903), Senate Doc. No. 6, 58th Cong., Spec. Sess., pp. 31, 61; Senate Report No. 289, *Investigating Strike in Steel Industries*, 66th Cong., 1st Sess., p. 11; *Report of Commission on Industrial Relations* (1916), Senate Doc. No. 415, 64th Cong., 1st Sess., Vol. 1, p. 67; *Report of the Board of Inquiry for the Cotton Textile Industry* (Sept. 20, 1934); *Labor and the Government* (Twentieth Century Fund, 1935) pp. 126–131.

ployees has been the basic issue in between 20 and 50 percent of industrial disputes.[12]

This Act eliminates these needless, bitter struggles by eliminating their basic causes. Subsection (1) of Section 8 prevents employers from interfering with rights guaranteed to workers by Section 7, which include the right to self-organization, free selection of representatives, and collective bargaining. Subsection (3) makes the prohibition more specific, by declaring it to be an unfair labor practice to discriminate in regard to tenure, terms, or conditions of employment for the purpose of either encouraging or discouraging membership in any labor organization.

(B) THE ACT FACILITATES THE PREVENTION AND ADJUSTMENT OF INDUSTRIAL STRIFE ARISING OUT OF DIFFERENCES OVER TERMS AND CONDITIONS OF EMPLOYMENT

The operation of the Act in eliminating or mitigating industrial disputes over the substantive terms of employment is no less significant. The Act does not attempt to fix any hours, wages, or working conditions. Nor does it provide for compulsory arbitration. It does not require or tend toward the closed shop, but merely leaves the rule on that subject to be worked out in accordance with state statutes and state decisions.

The peaceful settlement of industrial disputes concerning wages, hours, and the like, upon a voluntary basis, must rest upon two fundamental

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[12] See Appendix, *infra*, p. 144.

principles. First, there must be negotiation, for obviously parties to a dispute who refuse to confer cannot reach an agreement. Second, these negotiations, to be successful, must be conducted by representatives who have been freely chosen by each party to the dispute. Subsections (1) and (3) of Section 8 are designed to facilitate the establishment of these two fundamental requirements by insuring employees freedom in their organization and choice of representatives. Without such freedom no negotiation is possible; with it, many differences which otherwise would be settled by economic force may be settled in a peaceful manner.

The appropriateness of these means in eliminating industrial strife has been expressly approved by this Court. In *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, after holding that Congress might properly, under the commerce power, facilitate the amicable adjustment of labor disputes on interstate railroads, this Court said (p. 570):

> In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and con-

ditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.

There is no distinction between the statutory provisions involved in the present case and that sustained in the *Texas & New Orleans* case. Both protect employees in their self-organization and free choice of representatives, and both are the very basis of a statutory scheme to make the appropriate collective action of employees an instrument of peace rather than of strife. In each statute, the restraint in question is imposed upon the employer in order to prevent disputes and promote amicable adjustments. Each statute, in other words, adopts a means reasonably related to the exercise of Congressional power to prevent industrial disputes from burdening or obstructing commerce. Compare *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 347, footnote 5. Petitioner's argument that

the means provided in the statute are not appropriate (Br. pp. 61, 75–77), wholly ignores this controlling authority.

Contrary to petitioner's apparent contention (Br. p. 50), the record in the *Texas & New Orleans* case disclosed no evidence of a present or immediately threatened labor controversy interrupting interstate commerce. Such proof is of course unnecessary. It is sufficient that the practices regulated have the tendency to cause industrial strife which will directly affect, burden or obstruct interstate commerce. Compare *Baltimore & Ohio R. R.* v. *Interstate Commerce Comm.*, 221 U. S. 612; *Southern Railway* v. *United States*, 222 U. S. 20; *Second Employers' Liability Cases*, 223 U. S. 1; *Anderson* v. *Shipowners Association*, 272 U. S. 359; *United States* v. *Ferger*, 250 U. S. 199; *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. Petitioner's further contention that the prohibition upheld in the *Texas & New Orleans case* applied only to "voluntary" proceedings under the Railway Labor Act (Br. p. 60) is discussed at pp. 87–89, *infra*.

The principles thus judicially approved are not novel or untried. On the contrary, they represent the culmination of a long series of efforts by the Federal Government to eliminate industrial strife on the interstate railroads, and are consonant with Federal experience with the same problem in other fields.

The first application by Congress of the policy of safeguarding the right of employees to organize and bargain collectively was in the field of labor disputes on the railroads. They are the chief instrumentalities of commerce, and it is natural that they should have been the first to occupy the attention of Congress.

The history of governmental efforts to achieve industrial peace on the railroads range from the original Act passed in 1888 (c. 1063, 25 Stat. 501) through the Erdman Act of 1898 (c. 370, 30 Stat. 424), the Newlands Act of 1913 (c. 6, 38 Stat. 103), the Adamson Act of 1916 (c. 436, 39 Stat. 721), the war-time experience of the Government, the Transportation Act of 1920, Title III (c. 91, 41 Stat. 456), the Railway Labor Act of 1926 (c. 347, 44 Stat. 577), and finally the Amended Act of 1934 (c. 691, 48 Stat. 1185).[13] From the beginning every statute has recognized the right of employees to choose their own representatives for negotiation, conference, or arbitration. *E. g.*, Act of October 1, 1888, *supra*, Sec. 4; Erdman Act of 1898, *supra*, Secs. 7, 10. The same policy was pursued

[13] Several adequate and impartial studies of railroad labor legislation have been made. See Bulletin No. 303, *Use of Federal Power in Settlement of Railway Labor Disputes* (U. S. Bureau of Labor Statistics, 1922); Witte, *The Government in Labor Disputes* (1932), pp. 238–244; *Labor and the Government* (Twentieth Century Fund, 1935), pp. 172 *et seq.*

while the railroads were under Government control during the War.[14]

When the railroads were released from Federal control shortly after the War, Congress, in order to insure that labor disputes should not interrupt or impair the continuity or efficiency of interstate transportation, passed the Transportation Act of 1920. Title III of that Act created a Railway Labor Board, with power to hear and decide disputes, but without power to enforce its decisions. As an integral part of the machinery so set up, Section 301 provided that both carriers and employees had a duty to exert every reasonable effort to decide disputes in conferences between representatives selected by each side.

Title III was brought before this Court in *Pennsylvania R. R. Co.* v. *United States Railroad Labor Board,* 261 U. S. 72, and *Pennsylvania Federation* v. *Pennsylvania R. R. Co.,* 267 U. S. 203. The Court expressly recognized the importance to the scheme set up by Congress of the right to organize and designate representatives for collective bargaining, and the intimate relation between these rights and the conduct of the carriers' business (see, *e. g.,* 261 U. S. at p. 83), but ruled that Congress had not intended to impose a mandatory

[14] Director General of Railroads, General Order No. 8, Feb. 21, 1918, par. 5, provided: "No discrimination will be made in the employment, retention, or conditions of employment of employees because of membership or nonmembership in labor organizations."

duty upon the railroads to forego interference with employees in the designation of representatives.

As thus interpreted, Title III failed to accomplish its purpose, and was replaced by the Railway Labor Act of 1926, amended in some respects by the Act of 1934. The principle of protection of the right of self-organization and collective bargaining was adopted. See Section 2, subsections first, second, third. The power of Congress to enact Section 2, third, was expressly upheld in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, *supra,* pp. 41, 51–52.

The success of these principles in the railroad industry has been phenomenal. The National Mediation Board established by the 1934 Act was able to report, for the fiscal year 1935, that *every dispute had been settled peacefully.* (First Annual Report, p. 8.) For the fiscal year 1936 it reported in the railroad industry but one small strike involving less than 30 employees. (Second Annual Report, p. 1.) Its first annual report states (p. 8):

> We are pleased to report that during the year there were no strikes in the railroad industry. * * * Since the enactment of the Railway Labor Act in 1926 there has been an almost unbroken record of peaceful settlement of labor disputes on the railroads. * * * That the railroad industry could maintain such a peaceful record, especially since 1932 when strikes and industrial unrest have been prevalent in other industries

throughout the country, is testimony to the soundness and effectiveness of the labor policies formulated by Congress in the Railway Labor Act.

These results are even more significant when contrasted with the recurring industrial strife in the water and motor transportation fields, where there are fewer employees, and where labor organizations and other personnel structures are far less complex than on the railroads: [15]

	No. of disputes				No. of Workers Involved				Man-days of idleness			
	1933	1934	1935	*1936	1933	1934	1935	*1936	1933	1934	1935	*1936
Water transportation	14	76	122	36	3,071	28,590	39,490	6,306	32,783	1,068,867	748,594	119,820
Motor transportation	26	67	64	28	19,445	67,928	33,850	6,696	155,565	859,987	202,393	46,064
Railroads	0	0	1	0	0	0	28	0	0	0	56	0

* Includes only January to May 1936, and accordingly does not include the current maritime strikes.

The effect of the policies of the Railway Labor Act has been particularly marked in the development of comprehensive plans for "union-management cooperation" on the railroads, in the successful adjustment by mutual agreement of threatened disputes arising out of wage reductions during the depression period, and in the recent agreement re-

[15] Compiled from data published by the United States Department of Labor, Bureau of Labor Statistics, Bulletins No. R. 339 (1936), p. 4; No. R. 389 (1936), p. 4; *Monthly Labor Review* (May–September 1936), monthly "Analysis of Strikes."

garding unemployment problems arising out of the projected consolidation of railroad facilities.[18]

The plan of collective bargaining through freely chosen representatives of employees now in effect is all the more significant because it was arrived at after a long period of trial and error. During this period attempts were made, by statute or administrative decree, to fix the substantive terms of the employment contract. Such methods proved unacceptable in principle to both sides, and unworkable in actual practice. In the last analysis, the only important step in this direction on the railroads, the Adamson Act of 1916, sustained in *Wilson* v. *New,* 243 U. S. 332, as an emergency measure, was not the determining factor in the settlement of the threatened railroad strike for the eight-hour day. The strike was averted principally through the good offices of a committee of the Council of National Defense, appointed by the President in March 1917. See *First Annual Report of the National Mediation Board* (1935) pp. 61–62. Again, in the Transportation Act of 1920, the effort was made to have the parties accept harmoniously the awards rendered by the Labor Board in all disputes, including those regarding substantive terms of employment, the awards being enforceable by the sanction of public-

[18] *First Annual Report*, National Mediation Board (1935), pp. 8, 36; 80 Cong. Rec., pp. 7948–7952 (May 21, 1936); Otto S. Beyer, *The Machinery of Cooperation, The Partner, The New Labor Era* (1931), pp. 11, *et seq.*

ity. The result was that the Board was shunned by employers and employees alike, and its awards disregarded. *Id.*, p. 64. The same method had proved a failure under the original Act of 1888. *Ibid.* The voluntary agreement respecting displacement of employees in the consolidation of railroad facilities made unnecessary further consideration by Congress of a bill to fix the terms and conditions of employment in this connection. 80 Cong. Rec., pp. 7948–7952, *supra*, p. 58.

Congress acted wisely indeed when, in seeking to mitigate or eliminate industrial strife affecting interstate commerce generally by means of the National Labor Relations Act, it incorporated in that statute the best results of the half century of experience with railroad legislation outlined above.

The problem of labor strife on the railroads is, however, no different from that in other industries, and policies which have proved successful in the railroad industry may be expected to show a similar record of success in other fields. Indeed, unanimous agreement on the fundamental soundness of that approach is also found in the reports of various commissions established either by Congress or by the Executive to investigate labor disputes and make recommendations as to the best means for their elimination, and in the experience of the Federal Government during the World War, as well as during the period immediately preceding the passage of the National Labor Relations Act.

The first fruitful investigation of industrial strife was conducted by the Industrial Commission established by Congress in 1898 (c. 466, 30 Stat. 476). That Commission, consisting of five members of each House of Congress, and nine other persons representing different industries and employments, held hearings over a period of about three years. Over 700 witnesses and many official documents and court decisions were examined. The transcript of its testimony and its report, issued in 1902, comprised 19 substantial volumes.

The Commission found that "there is a general consensus of opinion that the voluntary extension and perfection of the system of collective bargaining, conciliation, and arbitration within the various trades themselves would prove highly advantageous, both to employers and workingmen and the general public." [17] The Commission went on to say (pp. 844–845):

> The chief advantage which comes from the practice of periodically determining the conditions of labor by collective bargaining directly between employers and employees is, that thereby each side obtains a better understanding of the actual state of the industry, of the conditions which confront the other side, and of the motives which influence it. Most strikes and lockouts would not occur if each party understood exactly the position of the other. Where represent-

[17] *Final Report of the Industrial Commission* (1902), Vol. 19, p. 844.

> atives of employers and employees can meet personally together and discuss all the considerations on which the wage scale and the conditions of labor should be based, a satisfactory agreement can, in the great majority of instances, be reached.
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> It is not to be supposed that the introduction of joint conferences and arbitration committees in a trade will render strikes and lockouts thereafter impossible. * * * Nevertheless experience both in England and in our own country shows that where these practices have once become fairly well established they greatly reduce the number of strikes and lockouts, and in many trades do away with them altogether for long periods of time. Even when a cessation of employment does intervene, the experience of the beneficial effects of peaceful methods usually leads to their reestablishment.

Similar conclusions were reached by the United States Anthracite Coal Strike Commission, and the United States Commission on Industrial Relations authorized by Congress in 1912.[18]

The conclusions of these Commissions were duplicated in the reports of the various agencies established to insure a full flow of goods in com-

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[18] *Report of the Anthracite Coal Strike Commission* (1902), Senate Doc. No. 6, 58th Cong., Spec. Sess., p. 64; *Final Report of Commission on Industrial Relations* (1916), Senate Doc. No. 415, 64th Cong., 1st Sess., Vol. I, pp. 61–68, 162, 215, 235.

merce during the World War.[19] By the autumn of 1917 it had become apparent that Government intervention in the spreading labor disputes would be necessary; consequently, in January 1918 a War Labor Conference Board, under the joint chairmanship of ex-President William H. Taft and Frank P. Walsh, was set up to make recommendations for a method of settling labor disputes for the duration of the War. These principles, unanimously recommended, and promptly adopted by the National War Labor Board, included the following:

> The right of workers to organize in trade unions and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.[20]

This policy was applied in numerous cases by the Board during the course of its sixteen months of operation.[21] The policy was also followed during the War by all other Governmental agencies concerned with labor relations, including the Ship-

[19] See Watkins, *Labor Problems and Labor Administration during the World War* (University of Illinois Studies in the Social Sciences, 1919) Vol. VIII, No. 3; Bulletin No. 287, *National War Labor Board* (U. S. Bureau of Labor Statistics, 1921), Chap. III.

[20] National War Labor Board, *Principles and Rules of Procedure* (1919), p. 4; Bulletin No. 287, *supra*.

[21] See Bulletin No. 287, *National War Labor Board* (U. S. Bureau of Labor Statistics, 1921), pp. 52–64. An illustration is the following statement from the decision of

building Labor Adjustment Board, the Director General of Railroads, the National Adjustment Commission, set up by voluntary agreement under the aegis of the United States Shipping Board to handle matters affecting longshoremen, and the Division of Marine and Dock Industrial Relations of the same Board, which dealt with ship personnel.[22]

Experience proved the soundness of this policy. Not a single strike or lockout was undertaken in defiance of an award of the National War Labor Board prior to the Armistice,[23] and the other war-

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the Board in the case of the New York Consolidated Railroad (Bulletin No. 287, *supra*, p. 264):

> The right of the workers of this company freely to organize in trade unions, or to join the same, and to bargain collectively, is affirmed, and discharges for legitimate union activities, interrogation of workers by officials as to their union affiliations, espionage by agents or representatives of the company, visits by officials of the company to the neighborhood of the meeting place of the organization for the purpose of observing the men who belong to such unions, to their detriment as employees of the company, and like actions, the intent of which is to discourage and prevent men from exercising this right of organization, must be deemed an interference with their rights as laid down in the principles of the board. * * *

[22] Bulletin No. 283, *History of the Shipbuilding Labor Adjustment Board* (U. S. Bureau of Labor Statistics), pp. 98–102; National Adjustment Commission, *Chairman's Report for the Period Ending Dec. 31, 1918*, pp. 9, 35; U. S. Shipping Board, *Report of the Director of the Marine and Dock Industrial Relations Division* (*Dec. 31, 1918*), p. 40.

[23] Witte, *The Government in Labor Disputes* (1932), p. 248. "In 138 recorded instances, and probably many others,

time adjustment agencies, considered together, functioned quite as effectively in a great number of disputes."[34]

During the immediate post-war period an attempt was made to continue the war-time method of adjusting labor controversies, and to preserve the means which had been found helpful during that trying period. In October 1919 President Wilson convened the First Industrial Conference, to which representatives of labor, employers, and the public were invited. The members of the Conference were unable to agree, however, and it adjourned without accomplishment.[35] President Wilson persisted, and constituted another conference which became known as the President's Industrial Conference. It assumed its duties on December 1, 1919, and rendered a report on March 6, 1920. The members of the conference were all representatives of the general public and in-

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strikes and lockouts were averted or called off as a direct result of the Board's intervention" (Bulletin No. 287, *supra*, p. 19). It is true that a large number of disputes occurred in 1917 and 1918. But, as Witte points out, "many of the strikes were outside war industries and most of the remainder were small affairs of short duration. At no stage did strikes seriously embarrass the United States in the World War—which is more than can be said of most of the warring countries" (*Id.*, pp. 248–249). See also Lauck and Watts, *The Industrial Code* (1922), p. 57.

[34] Witte, *supra*, p. 248; National Adjustment Commission, *Report of the Executive Secretary, 1919–1920*, pp. 5–6.

[35] *Proceedings of the First Industrial Conference* (Washington, D. C., 1920); Perlman and Taft, *History of Labor in the United States* (1935), pp. 490–491.

cluded some of the country's foremost citizens. In a unanimous report the Conference recommended the establishment of a National Industrial Board, local regional conferences, and boards of inquiry, with a view to settling disputes through mediation efforts wherever possible and, if such methods failed, through compulsory investigation and report by impartial agencies.[36] The Conference report declared:

> Representatives must be selected by the employees with absolute freedom. In order to prevent suspicion on any side, selection should be by secret ballot. There must be equal freedom of expression thereafter. All employees must feel absolutely convinced that the management will not discriminate against them in any way because of any activities in connection with shop committees.
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> The Conference is in favor of the policy of collective bargaining. It sees in a frank acceptance of this principle the most helpful approach to industrial peace. It believes that the great body of the employers of the country accept this principle. The difference of opinion appears in regard to the method of representation. In the plan proposed by the Conference for the adjustment of disputes, provision is made for the unrestricted selection of representatives by employees, and at the same time provision is

[36] *Report of Industrial Conference called by the President* (March 6, 1920), pp. 15–24.

> also made to insure that the representatives of employees in fact represent the majority of the employees, in order that they may be able to bind them in good faith."[27]

In 1933, in accordance with its established policy, Congress incorporated in the National Industrial Recovery Act a provision that every code, agreement, or license under that Act include the provisions of Section 7 (a), which declared the right of employees to organize and bargain collectively free from interference by employers.[28] No administrative machinery was established for the interpretation or enforcement of this section. However, in order to meet a rising tide of labor disputes, not unusual in similar periods of emergence from economic depression, the President, on August 5, 1933, appointed, at the request of representatives of employers and employees, a National Labor Board, under the Chairmanship of Senator Robert F. Wagner. The Board, operating under the principles embodied in Section 7 (a), functioned as a mediation and fact-finding agency. While this Board achieved considerable success in the settlement and prevention of industrial strife,[29] its lim-

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[27] *Id.*, pp. 11, 31.

[28] Section 7 (a) (1) and 7 (a) (2). These provisions of Section 7 (a) were not before the Court in *Schechter Corp. v. United States*, 295 U. S. 495.

[29] The work of the National Labor Board is discussed in Brown, *Selection of Employee Representatives*, Monthly Labor Review (January 19, 1935), pp. 1–18; Lorwin and Wubnig, *Labor Relations Boards* (The Brookings Institution, 1935), pp. 87 *et seq.*; *Labor and the Government*

ited powers proved ineffective precisely in those cases where its intervention was needed most, namely, those arising out of claimed violations of Section 7 (a).

During the Spring of 1934, a bill was introduced somewhat similar to the present Act in its substantive provisions (S. 2926, 73d Cong., 2d Sess.). After extended hearings before the Senate Committee on Education and Labor, that Committee reported the bill with amendments (Sen. Rep. No. 1184, 73d Cong., 2d Sess.). The bill was not given consideration on the floor of Congress because of pressure of adjournment. Instead, Public Resolution No. 44 (c. 677, 48 Stat. 1183) was adopted as a temporary substitute. This Resolution empowered the President to establish until the next year a board or boards authorized and directed to investigate issues, facts, and practices in controversies arising under Section 7 (a) of the National Industrial Recovery Act, or which were burdening and obstructing, or threatening to burden or obstruct, the free flow of interstate commerce (Sec. 1). Such boards were specifically empowered to order and conduct elections by secret ballot to determine the representatives of employees for the purpose of collective bargaining, and in that connection to exercise subpoena power. Election orders were to be enforced and reviewed in the same manner,

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(Twentieth Century Fund, 1935), pp. 194 *et seq.*; 78 Cong. Rec. pp. 12029–12032 (June 16, 1934).

so far as applicable, as orders of the Federal Trade Commission under the Federal Trade Commission Act (Sec. 2). The first National Labor Relations Board was established by the President under this Resolution, and operated for about one year,[30] until the appointment of the present Board under the present Act.

This Act is therefore the culmination of half a century of Federal experience with various aspects of the industrial disputes problem as it affects the national interest.[31] That experience shows that subsections (1) and (3) of Section 8 are, in fact, reasonably designed to prevent or mitigate industrial strife. We have in Section 1 of the Act the express Congressional finding that the provisions of the Act remove "certain recognized sources of industrial strife and unrest", and encourage "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions." The Act was before Congress for two years. Extensive hearings were held, and the problems exhaustively

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[30] The work of the first National Labor Relations Board is discussed in Lorwin and Wubnig, *Labor Relations Boards* (The Brookings Institution, 1935), pp. 291–331; Wheeler, *Employee Elections Conducted by National Labor Relations Board*, Monthly Labor Review (May 1935), pp. 1149–1154; (October 1935), pp. 956–959.

[31] See also *Labor and the Government* (Twentieth Century Fund, 1935), pp. 363–373, 380–384, recommending legislation substantially in accord with the provisions of the Act.

studied."[33] Surely these findings, which are so completely supported by experience, cannot be found arbitrary and unreasonable. *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263; *Stafford* v. *Wallace*, 258 U. S. 495, 521; *Old Dearborn Distributing Co.* v. *Seagram-Distillers Corporation*, Nos. 226, 372, decided December 7, 1936.

We submit, therefore, that subsections (1) and (3) of Section 8 of the present Act are appropriate means for eliminating industrial strife.

C. *The Application of the National Labor Relations Act to this Petitioner in Its Relations with Its Editorial Employees is a Valid Exercise of the Commerce Power*

The foregoing discussion has indicated the fundamental constitutionality of the National Labor Relations Act as a reasonable and appropriate means of removing or diminishing industrial strife burdening and obstructing interstate commerce. There remains only the question, which must necessarily arise in each proceeding: may the Act be validly applied under the circumstances here involved?

This question, we believe, has been conclusively answered in the affirmative by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281

[33] Hearings on S. 2926, 73d Cong., 2d Sess., Senate Committee on Education and Labor; Hearings on S. 1958, 74th Cong., 1st Sess., Senate Committee on Education and Labor; Hearings on H. R. 6288 (companion bill to S. 1958), 74th Cong., 1st Sess., House Committee on Labor. See also Sen. Rep. No. 573 and H. Rep. No. 1147, 74th Cong., 1st Sess.

U. S. 548. There is no essential difference between the employer there and the employer here. In each case Congress is dealing with an agency devoted to interstate service. Transmission across state lines, whether of information or of tangible commodities, is within the general concept of "intercourse" among the States. *Supra,* pp. 32–35. Nor is there any essential distinction between the types of employees with which the Court was concerned in the *Texas & New Orleans* case and the editorial employees of petitioner, including Morris Watson, around whom the interference and discrimination particularly centered. The labor organization in the *Texas & New Orleans* case was the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees of the Southern Pacific Lines in Texas and Louisiana, which, as its name implies, was composed of ticket sellers, baggage men, train dispatchers, and similar clerical employees. Just as in the case of railroad employees, the work of petitioner's editorial employees varies in the degrees of physical proximity to the physical transmission. The work of the "filing" editor—principally selection and control—immediately precedes and, indeed, directs the course of, transmission; the work of the other editorial employees may at times be slightly further removed. The same type of gradation exists in the railroad industry, ranging, for example, from conductors, train dispatchers and

baggage handlers to ticket clerks and like clerical employees. As we have shown above (*supra*, pp. 35–39), the work of these editorial employees is at the very hub of petitioner's system of interstate and foreign commerce. If any distinction is possible between these employees and the members of the Brotherhood of Railway Clerks, we submit that the former are closer to, and more directly connected with, the interstate operations of their employer than the latter.

Moreover, quite apart from this controlling authority, it is undeniable that industrial strife between petitioner and its editorial employees would in fact substantially and directly burden interstate and foreign commerce. The work of these employees in rewriting and filing news dispatches is an important and integral part of the functions of petitioner's world-wide communication enterprise. Cf. *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105. Obviously, a strike or lockout of petitioner's editorial employees would, in the words of the court below "be a dam to the flow of this news" (R. 442), and completely disrupt the collection and transmission of news. Particularly in the New York office, such a breakdown would seriously obstruct the flow of domestic news, and even more seriously cripple the distribution of foreign items, for the usual practice is to have all European news go through the New

York office (R. 64, 88). Other arrangements could, and have, on occasion, been made (R. 64), but the re-routing would be expensive and difficult, and itself a burden on interstate commerce within the constitutional concern of Congress. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243–245; *McCall* v. *California*, 136 U. S. 104, 111. The interstate and foreign commerce of this far-flung communication system would thus be impaired, if not wholly paralyzed."

Indeed, if a labor dispute produced no more than a delay in the operations of the New York office, it would be a grievous burden to this interstate commerce. Most types of news items are, by their very nature, perishable. *International News Service* v. *Associated Press*, 248 U. S. 215. See p. 38, *supra*. If petitioner fails to supply fresh and complete news its member papers suffer, the great public interest in full and speedy news coverage from all parts of the world is frustrated, and petitioner's very existence is threatened (R. 310, 316).

" Thus, in its bill in equity seeking to enjoin the Board's hearing in this matter, petitioner alleged that "said defendants [officers of the Board] threaten to require many employees of complainant to appear before the Trial Examiner as witnesses, which will interfere with, and cause damage to, the complainant's business in the gathering and dissemination of news which must be performed expeditiously and without interruption during twenty-four hours of each day" (*Associated Press* v. *Herrick*, in Equity No. 82–98, injunction denied per Bondy, J., 18 F. Supp. 897 (S. D. N. Y.).

These editorial operations at the New York office are, we submit, within Federal power because they are in, or intimately connected with, interstate commerce. In this field the Court has given the widest application to the principles which are at the basis of the National Labor Relations Act as here applied: "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations." *The Minnesota Rate Cases,* 230 U. S. 352, 399. "The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury * * * no matter what may be the source of the dangers which threaten it." *Schechter Corp.* v. *United States,* 295 U. S. 495, 544. If a subject is within Federal power in the light of these principles, the Tenth Amendment is inapplicable. *United States* v. *California,* 297 U. S. 175.

Thus, there has been no hesitation in subjecting employment relations in interstate businesses to appropriate Federal legislation, even where the relation between the particular employees regulated and the interstate operations was not so close as in the case at bar. Apart from *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,*

281 U. S. 548, in which the Railway Labor Act was applied to ticket-sellers, train dispatchers, station men, baggage handlers and the like, there are many cases in which the Employers Liability Act has been given wide application; for example, to injuries suffered by interstate employees through negligence of an intrastate employee (*Second Employers' Liability Cases*, 223 U. S. 1, 51–52), and to injuries suffered by the cook for a bridge repair crew (*Philadelphia, B. & W. R. Co.* v. *Smith*, 250 U. S. 101). Nor do such decisions by any means go to the limit of Federal power. *Illinois Central R. R. Co.* v. *Behrens*, 233 U. S. 473, 477–478. Cf. *Texas & Pacific Ry.* v. *Rigsby*, 241 U. S. 33, 39. See also *Di Santo* v. *Pennsylvania*, 273 U. S. 34; *Southern Ry. Co.* v. *United States*, 222 U. S. 20.

Moreover, whether or not the editorial office be regarded as a part of interstate commerce itself, this work is clearly carried on in a "practical continuity of movement", *Schechter Corp.* v. *United States*, 295 U. S. 495, 543, at the "throat" of a well-defined "current" or "flow" of commerce. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 305. This concept of a "current" or "flow" of interstate commerce has been invoked under the commerce clause to sustain Federal regulation, or to deny authority to the States, in respect of transactions in a regular course of business involving purchases within a State for the purposes of subsequent shipment to other States, *United States* v. *Read-*

ing Co., 226 U. S. 324, 367; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189; *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277; involving leases contemplating shipment from another State, *Binderup* v. *Pathe Exchange*, 263 U. S. 291; and involving commodities which have come to rest as the result of shipment from other States and are intended to be the subject of further shipments in interstate commerce, *Stafford* v. *Wallace*, 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

The fact that the "news" coming into the New York office is halted in some instances for a very brief period and "rewritten" or selected and thereafter "filed" (that is, put on the wire for transmission), does not make the "flow" analogy inapposite. This editorial treatment no more interrupts the continuity of the flow than did the change of stock reports from Morse code to ticker symbols in *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105. See also *Caldwell* v. *North Carolina*, 187 U. S. 622; *National Labor Relations Board* v. *National New York Packing Co.*, 86 F. (2d) 98 (C. C. A. 2d). Indeed, without such editorial employees the distribution of news would be practically impossible. See *Heyman* v. *Hays*, 236 U. S. 178, 186. Moreover, "continuity of transit" is not essential. Federal power extends to practices directly affecting the flow of commerce and occurring at a "throat"

through which the current passes, where the articles in question have come to a temporary rest and acquired a situs within the State, either for purposes of local sale and complete processing over an extended period, *Stafford* v. *Wallace, supra,* or for purposes of temporary storing, inspecting, mixing, weighing, grading, repacking, and sale. *Chicago Board of Trade* v. *Olsen, supra. Cf. Minnesota* v. *Blasius,* 290 U. S. 1; *Bacon* v. *Illinois,* 227 U. S. 504.

If the relation between the subject regulated in the *Stafford* and *Olsen* cases and the flow of interstate commerce was close enough to bring the regulation within the Federal power, then the relationship is certainly close enough to sustain the National Labor Relations Act as applied to the editorial employees of this petitioner in its New York City office. In the cases referred to, the requisite burden on commerce was found in the economic effect of the practices regulated on interstate prices. Here the burden resulting from industrial strife is far more direct and disastrous because its necessary effect would be the immediate interruption of interstate and foreign commerce itself, as carried on through the highly important New York office. The burden is at least equally recurring, and its existence, causes, and effects equally firmly grounded in Congressional findings and the information and experience available to Congress.

Lastly, it is submitted that even if it be decided that Morris Watson and the other editorial em-

ployees of petitioner at its New York City office are not engaged "in or about commerce", but in some occupation analogous to "production" or "manufacture" of news, nevertheless the Act is validly applied under the principles set forth in the brief filed on behalf of the National Labor Relations Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation.*

II

SUBSECTIONS (1) AND (3) OF SECTION 8 OF THE NATIONAL LABOR RELATIONS ACT ARE, AS APPLIED TO THE PETITIONER, CONSISTENT WITH THE FIFTH AMENDMENT

The order of the court below (R. 445) directs petitioner (1) to cease and desist from discouraging membership in the American Newspaper Guild or any other labor organization of its employees, by discharging or otherwise discriminating against its employees for joining the Guild or any other labor organization, and from in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed in Section 7; and (2) to offer full reinstatement, with reimbursement for loss of pay, to Morris Watson, an employee found to have been discriminated against because of his exercise of said rights. This order of the lower court enforces without alteration the Board's order (R. 432–433), which is based exclusively upon a finding that petitioner had violated subsections (1) and (3) of Section 8 of the Act. It is necessary to consider,

therefore, only the validity of those subsections, which go no further than to forbid interference, coercion or discrimination against employees because of membership or activity in a labor organization. No other subdivisions of Section 8 has been invoked against petitioner in this case, it has not suffered injury from those other subdivisions, and it has now no standing to complain of them. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 43; *Champlin Refining Co.* v. *Commission,* 286 U. S. 214, 234–235.[34]

With respect to the provisions which are here involved, the Board contends, first, that their validity under the Fifth Amendment is sustained by the decision in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548; and, second, that in any event the provisions are reasonable and consonant with due process.

A. *The Issue of Due Process is Governed by Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks, 281 U. S. 548*

The *Texas & New Orleans* case arose under the Railway Labor Act of 1926, c. 347, 44 Stat. 577.[35]

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[34] See pp. 108–124, *infra.*

[35] The Railway Labor Act of 1926, in its original form and as amended by the Act of 1934, is considered in detail in the briefs filed in No. 324, *The Virginian Railway Co.* v. *System Federation No. 40,* Present Term.

That statute, in order to prevent industrial disputes on the railroads, established machinery for mediation, negotiation, and collective bargaining.[36] In that Act (as it read when the *Texas & New Orleans* case was decided) Congress, in Section 2, subdivision third, had provided that:

> Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, *without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.* [Italics supplied.][37]

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[36] The National Labor Relations Act, like the Railway Labor Act, provides the machinery for voluntary negotiation between representatives of management and labor; but the National Labor Relations Act, unlike the Railway Labor Act, does not provide for mediation by a Government tribunal, inasmuch as machinery for such mediation had already been created, and did not need to be duplicated. Section 8 of the Act of March 4, 1913, c. 141, 37 Stat. 738; U. S. C., Title 5, Sec. 619. See also the last sentence of Section 4 (a) of the National Labor Relations Act.

[37] For purposes of comparison, the relevant portions of Section 8 (1) and (3) of the National Labor Relations Act, upon which this order was based, are set out:

> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights [to self-organization and free choice of representatives] guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employ-

In the *Texas & New Orleans* case, the Brotherhood filed a bill of complaint alleging that the railroad had intimidated members of the Brotherhood and persuaded and coerced them to withdraw from membership, and prayed that the railroad be restrained from such interference, influence, or coercion in violation of the statute. On preliminary hearing the District Court found the facts to be substantially as alleged and issued a temporary injunction, virtually in the words of the statute, restraining the carrier "from in any way or manner interfering with, influencing, intimidating, or coercing" the employees "with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant Railroad Company" (281 U. S. at 555–556, note).

The railroad had earlier organized a so-called "company union", the Association of Clerical Employees—Southern Pacific Lines. The District Court found that notwithstanding the temporary injunction, the agents of the railroad continued to solicit membership for this association. Employees active in its affairs made reports to the railroad, and were paid by it for their expenses and time. Five of the leading members of the Brotherhood were discharged for their activity in its behalf (24 F. (2d) at 431–434). The District Court found

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ment to encourage or discourage membership in any labor organization. * * *

the railroad guilty of contempt and ordered it to purge itself by: (1) disestablishing the Association which it was supporting, until the employees had chosen, by secret ballot, between it and the Brotherhood; (2) ceasing to extend favors to the Association not also offered to the Brotherhood; and (3) reinstating the employees and making them whole for any loss of wages suffered by reason of their discharge (24 F. (2d) at 434. See also Record, No. 469, October Term, 1929, pp. 267 *et seq*).

Thereafter the Brotherhood filed an amended bill of complaint which substantially incorporated the new matter, including the discriminatory discharges proved in the contempt proceedings. (Record, No. 469, October Term, 1929, pp. 314–369.) Upon final hearing the District Court made permanent the temporary injunction and denied a motion by the carrier to vacate the order in the contempt proceedings (*Id.*, pp. 402–404; 388–394. See also 25 F. (2d) 873, 25 F. (2d) 876).[38]

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[38] "The status restored", said the District Court, "was disturbed by the railroad company *in violation of the law and of the injunction*. From disturbing this status the railroad was and is expressly enjoined by the statute and the order of this court * * * But, if the employees have the right, which the statutes here say they have, to freedom in the matter of self-organization and the selection of representatives from interference, influence, or coercion on the part of the defendant company, then the injunction has done no more than to insist upon that right, and the contempt order no more than to make that injunction effective" (25 F. (2d) at 878). [Italics supplied.] The District Court also pointed out that the reinstatement order gave no

The decree of the Circuit Court of Appeals for the Fifth Circuit affirmed all three of the orders of the District Court (33 F. (2d) 13), and upon certiorari this Court in turn affirmed the decree of the Circuit Court of Appeals. This Court accepted the findings of the lower courts (281 U. S. at p. 560):

> The circumstances of the soliciting of authorizations and memberships on behalf of the Association, the fact that employees of the Railroad Company who were active in promoting the development of the Association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the Railroad Company of expenses incurred in recruiting members of the Association, the reports made to the Railroad Company of the progress of these efforts, *and the discharge from the service of the Railroad Company of leading representatives of the Brotherhood* and the cancellation of their passes, gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the Railroad Company and its officers were actually engaged in promoting the organization of the Association in the interest of the Company and in opposition to the Brotherhood, and that *these activities constituted an actual interference*

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continuous status, but merely required that an act of unlawful interference be undone, and insured that it not occur again for the same or similar reasons. 25 F. (2d) at 877.

> *with the liberty of the clerical employees in the selection of their representatives.* [Italics supplied.]

Regarding the orders made, the Court refused to find "that the decree below goes beyond the proper enforcement of the provision of the Railway Labor Act" (p. 571).

In response to the carrier's argument that if the statute authorized the decree it was invalid under the Fifth Amendment, this Court, after disposing of the question of power under the commerce clause, stated (p. 570):

> Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather

than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.

The provisions of the National Labor Relations Act here involved and the present order correspond in every manner material to the due process issue with Section 2, third, of the Railway Labor Act and with the three orders of the District Court in the *Texas & New Orleans* case. We submit, therefore, that their validity under the Fifth Amendment is established by the decision of this Court in that case.

Petitioner, however, seeks to distinguish the *Texas & New Orleans* decision by asserting that there this Court upheld the order requiring the carrier to restore the discharged men to their employment and to reimburse them for loss of pay on the ground that it was a valid method of permitting the carrier to purge itself of contempt in violating the temporary injunction. (Br. pp. 60, 93.) It is clear from the foregoing, however, that this Court had before it not only the contempt order but the temporary and final injunctions, and put its decision affirming the rulings below squarely on the ground that the Act, as interpreted

and applied by the courts below, was constitutional. The original decree of the District Court was cast in terms substantially identical with the statute. Since the discriminatory discharges were held violations of the injunction, as petitioner admits (Br. p. 93), they were interferences prohibited by the statute. Moreover, the circumstances of these discharges were realleged in the amended bill of complaint, on the basis of which the temporary injunction was made permanent, and the validity of Section 2, third, of the Act considered and decided. This Court properly regarded "the discharge from the service of the Railroad Company of leading representatives of the Brotherhood" (281 U. S. at 560) not merely a violation of the injunction (p. 557) but "an actual interference with the liberty of the clerical employees in the selection of their representatives" (p. 560), and hence a violation of the *statute*. And in affirming as within the proper enforcement of the Act the order requiring reinstatement of the discharged employees and payment of their back wages, this Court decided that it constituted an appropriate auxiliary remedy to supplement the prohibition against discrimination spelled out in Section 2, third, of the Act.

Petitioner relies upon *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1. (Br. pp. 70–73.) In the *Texas & New Orleans* case this Court considered both these cases and

expressly rejected them as inapplicable (281 U. S. at 570–571):

> The petitioners invoke the principle declared in *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selection, they cannot complain of the statute on constitutional grounds.

The Court thus held that the discharge of employees because of activity in the Brotherhood was not a "normal exercise of the right" to hire or discharge employees which is protected under the due process clause of the Fifth Amendment. Likewise under the present Act, as the court below pointed out (R. 445), there is no interference with the normal right to hire or discharge, for inefficiency or any other reason satisfactory to the employer, "provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively."

The *Adair* and *Coppage* cases need not be extensively analyzed here. It is sufficient to say

that both decisions were vigorously urged by the carrier in the *Texas & New Orleans* case. The facts of the latter case are so similar to those of the case at bar that the earlier cases, if inapplicable there, cannot be applicable here."

Petitioner also argues that the Railway Labor Act prohibited interference with representatives only for purposes of proceedings in arbitration and mediation under that Act (Br. pp. 59–60). The contrary is plainly evident. In the Act of 1926, Congress, while providing for voluntary adjustment and arbitration of disputes, specifically added a "distinct prohibition against coercive measures" in the choice of representatives, and in the exercise by employees of their right of self-organization, for the lack of which the previous Act of 1920 had

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[11] It is not difficult to find other appropriate grounds for regarding the *Adair* and *Coppage* cases as inapplicable to the Railway Labor Act of 1926 and the National Labor Relations Act. In the *Adair* case the provision imposing a criminal penalty for the discharge of railroad employees by reason of their membership in a labor organization had, in the opinion of the majority of this Court, no bearing upon interstate commerce. The majority could see no "legal or logical connection * * * between an employe's membership in a labor organization and the carrying on of interstate commerce." 208 U. S. at 178; and see at p. 175. See also *Coppage* v. *Kansas*, 236 U. S. at 16. The due process issue in the *Adair* and *Coppage* cases, therefore, was simply whether the restriction of the liberty of the employer by drastic criminal penalties could be justified on the general ground that it promoted the interests of the employees or labor organizations.

So far as the Federal power is concerned, in the years following the *Adair* decision, experience has shown and this

failed fully to accomplish the Congressional purposes. (281 U. S. at 564–568). Under the Act of 1926, the process of negotiation between the parties themselves was the first line of defense against labor disputes (Sec. 2, first, second), and it would have been strange indeed if the statutory protection in choice of representatives did not apply at that stage. On petitioner's theory, the prohibition against interference should not have been applicable at all in the *Texas & New Orleans* case, since the carrier had declined to submit the controversy in question to arbitration or mediation by the Railroad Labor Board (281 U. S. at 559; 24 F. (2d) at 432–433). Yet the precise controversy before the Court in that case was "with respect to the

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Court has recognized that the question of free choice of employee representatives *has* an important bearing on the conduct of interstate commerce, *Pennsylvania R. R.* v. *U. S. Railroad Labor Board*, 261 U. S. 72, 83; that there *is* both a legal and a logical connection between protection to self-organization and collective bargaining, and the carrying on of interstate commerce; and consequently, that protection of such rights constitutes a valid exercise of the commerce power. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369. The recognition of this change in the factual basis of the Act has a significant bearing not only on the commerce issue but also on the due process issue. For the question under the due process clause is no longer whether the restriction upon employers is justifiable merely as promoting the welfare of employees, but whether it is justified as a reasonable limitation for the effectuation of an end within Federal power—the peaceful settlement of industrial disputes threatening the free flow of interstate commerce.

construction, validity, and application of this statutory provision" (281 U. S. at 558). And this Court specifically upheld and enforced the prohibition of interference with choice of representatives "for the purpose of negotiation and conference between employers and employees" (p. 570), that is, for purposes of collective bargaining.

B. *Apart From Controlling Authority, the Provisions Here Involved are Reasonable and Consonant with Due Process*

We believe that the *Texas & New Orleans* case is a controlling precedent upon the precise due process issue in the present case. However, it may be helpful to set out some of the considerations which establish the reasonableness of the Act without regard to the close parallel found in the facts of that case.

The Fifth Amendment serves to invalidate legislation only so far as "the means selected" are "unreasonable, arbitrary or capricious", and have no "real and substantial relation to the object sought to be attained." *Nebbia* v. *New York,* 291 U. S. 502, 525. The policy and wisdom of the statute, to which petitioner's brief is principally addressed, are for Congress. The earnest conflict of serious opinion does not bring these matters within judicial cognizance. *Chicago, B. & Q. R. R. Co.* v. *McGuire,* 219 U. S. 549, 569. We have shown earlier that industrial disputes recurrently and substantially burden and obstruct interstate and

foreign commerce, and that unfair labor practices, such as discriminatory discharges based on union membership, not only constitute a major cause of industrial disputes but also establish conditions under which neither temporary adjustments nor lasting settlements can be made. Congress has, therefore, a legitimate interest in eliminating such practices, and subsections (1) and (3) of Section 8 represent a Congressional power exercised in regulation of interstate commerce.

It is apparent that the means used here—including the procedure of complaint, hearing, and cease and desist order, the basic prohibition against interference with employee organization and representatives through discriminatory discharge, and the remedial order to restore the status disturbed by violation of that prohibition—have a real and substantial relation to the object sought to be attained. The principal remaining question, therefore, is whether the prohibition itself is an "unreasonable, arbitrary or capricious" means of accomplishing that end, in that it imposes a supposed unconstitutional limitation upon the freedom of petitioner. That this is far from being the case can readily be seen from a consideration of the basic liberties of employees here given protection, and the corresponding restraints imposed upon employers.

This Court has given complete recognition to the powerful and legitimate incentives which motivate employees in the formation of labor organizations

for the advancement of their interests. In *American Foundries* v. *Tri-City Council*, 257 U. S. 184, the Court said (p. 209):

> They [labor unions] have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. * * * The right to combine for such a lawful purpose has in many years not been denied by any court.[40]

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[40] See generally, Hoxie, *Trade Unionism in the United States* (1923), pp. 219–222; Daugherty, *Labor Problems in American Industry* (1933), pp. 413–415; Fitch, *Causes of Industrial Unrest* (1924), pp. 90–91. Compare *Holden* v. *Hardy*, 169 U. S. 366, 397.

The efforts of editorial employees and reporters to associate in labor organizations date from the 1890's, have paralleled those of manual and other professional workers, and have not been peculiar to journalists in the United States. *Final Report of the Industrial Commission* (1902), Vol. 7, pp. 275–276; U. S. Senate Commission on Industrial Relations, *Final Report and Testimony* (1906), Vol. 6, pp. 5547–5548; *Conditions of Work and Life of Journalists* (International Labor Office, Studies and Reports, Series L, No. 2, Geneva, 1928), pp. 45–46, 49. During the depression, considerable unrest developed among editorial employees and reporters, due to lowering of wage standards and the unemployment caused by the elimination and consolidation of

In *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, this Court reiterated (p. 570):

> The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. * * *

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various newspapers, notably the *New York World*. The American Newspaper Guild, the labor organization here involved, was organized in 1933, for editorial employees and reporters of press associations and newspapers. It is a national organization with local units in about 70 cities R. 195, 258, 264, 350, *et seq.*, 383, *et seq.*; 423–424). As of January 1, 1937, Guild chapters had negotiated written trade agreements with some 17 newspapers having a daily circulation of more than 2,946,000; and some 15 newspapers, with a daily circulation of 2,485,000, had posted notices embodying the results of negotiations with the Guild. The Guild also has verbal understandings with many other newspapers, providing for the orderly settlement of grievances as they arise. In regard to press services, Guild chapters have negotiated a written agreement with the New York branch of the Havas Agency, the French press service comparable to the Associated Press, and also have verbal understandings with three American press services, the International News Service, International News Photos, and the Universal News Service. *Editor and Publisher*, (Nov. 14, 1936), p. 10; (Dec. 5, 1936), pp. 5, 30; *Guild Reporter* (December 1, 1936), pp. 1–3, 5; (December 15, 1936), pp. 1–5; (January 1, 1937), pp. 2, 6; (Jan. 15, 1937), p. 4. (Circulation figures are for 1935, and are taken from *Editor and Publisher*, International Yearbook for 1936.)

Indeed the collective action of employees "with respect to the selection of representatives to confer with the employer in relation to contracts of service" was found in that case to be a property interest. 281 U. S. at 571.

An employer seeking to combat the exercise of these rights by employees has at his disposal economic weapons of overwhelming power. Through the abrupt discharge of union leaders or members, threats to discharge others, and similar methods of opposition, the employer may destroy self-organization on the part of his employees and defeat their efforts at collective bargaining through representatives of their own choosing. The actual liberty of employees to exercise rights recognized by this Court as justly theirs is destroyed by the employer's unrestricted freedom to discharge employees on account of membership in a labor organization or active participation in its affairs, as the facts of this case bear witness (R. 234, 243; 430). The appropriate collective action of employees is reduced to a mockery where representation is thus made futile by such interferences with freedom of choice. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. at 570. The Act as here applied merely safeguards this recognized and essential liberty of employees by placing a limited and reasonable restriction on the employer's use of his power of discharge.

There is nothing unusual in such regulation. It is familiar law that an act perhaps lawful in itself

may become unlawful if engaged in with wrongful intent or as part of a plan to achieve an unlawful end. Cf. *Aikens* v. *Wisconsin*, 195 U. S. 194, 206; *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U. S. 359, 375; *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 256 U. S. 350. Curtailments of the employer's liberty have repeatedly been sanctioned whenever the legislation has been shown to have a reasonable relation to a proper governmental end. For example, the due process clause of the Fifth or Fourteenth Amendment is not violated if the hours of labor are regulated;[41] if the method of calculating,[42] or the manner[43] or time[44] of paying wages is prescribed; if common law defenses against recovery for injury in the course of employment are restricted or eliminated;[45] if the employer is forbidden to refuse service letters upon discharge,[46] or to

[41] *Holden* v. *Hardy*, 169 U. S. 366; *B. & O. R. R. Co.* v. *I. C. C.*, 221 U. S. 612; *Bunting* v. *Oregon*, 243 U. S. 426; *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Miller* v. *Wilson*, 236 U. S. 373; *Radice* v. *New York*, 264 U. S. 292.

[42] *McLean* v. *Arkansas*, 211 U. S. 539; *Rail & River Coal Co.* v. *Yaple*, 236 U. S. 338.

[43] *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *Keokee Consolidated Coke Co.* v. *Taylor*, 234 U. S. 224.

[44] *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348; *St. Louis, Iron Mt. & St. P. Ry. Co.* v. *Paul*, 173 U. S. 404; *Erie R. R.* v. *Williams*, 233 U. S. 685.

[45] *Second Employers' Liability Cases*, 223 U. S. 1.

[46] *Prudential Insurance Co.* v. *Cheek*, 259 U. S. 530; *Chicago, Rock Island & P. Ry. Co.* v. *Perry*, 259 U. S. 548.

enter into contracts with his workers which limit his liability in the event of future injury;" or if he is forbidden to employ child labor." These decisions are obviously not limited to enterprises "affected with a public interest." See also *Nebbia* v. *New York*, 291 U. S. 502, 536–537.

Nor is precedent lacking for the particular type of legislation at bar. On the railroads, the principle of protection of the employees' right of self-organization developed from half a century of experience with the regulation and, for several years, the governmental operation of the railroads. *Supra*, pp. 54–59. In other fields, the problem of industrial strife has been subject to exhaustive investigations at periodic intervals beginning in 1882. In all of these investigations the liberty of employees to organize has been recognized and accepted; in certain of them protection of that liberty, similar to the protection given by the Act before the Court, has been recommended for legislation. *Supra*, pp. 60–66. Such protection was approved and applied to war industries during the World War. *Supra*, pp. 61–64. Since that time like protection has been incorporated not only in the Railway Labor Act of 1926 and the amendments of 1934, but in the Norris-La Guardia Anti-Injunction Act (c. 90, 47 Stat. 70; U. S. C., Title 29, Secs. 102, 103); in the Bankruptcy amend-

[11] *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549.
[12] *Sturges & Burn* v. *Beauchamp*, 231 U. S. 320.

ments of 1933 (c. 204, 47 Stat. 1481, Sec. 77 (p) and (q)), and of 1934 (c. 424, 48 Stat. 922; U. S. C., Title 11, Sec. 207 (1) (m)); in the Act for the coordination of interstate railroad transportation (c. 91, 48 Stat. 214; U. S. C., Title 49, Sec. 257 (e)); and in the National Industrial Recovery Act (c. 90, 48 Stat. 198, U. S. C., Title 15, Sec. 707 (a)). The principle has also found repeated recognition in various forms of state legislation, particularly in recent years.[49] Thus the protection of employees in their freedom of association has been for a long time a recognized and fundamental part of the policy of the Federal Government in all aspects of labor relations subject to its control or legislative authority, and has been approved as just and reasonable.

It is important to note how carefully restricted the Act is. It limits only petitioner's freedom to

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[49] Ariz. (1931) Rev. Code (Supp. 1934), Sec. 1360 a; Cal. (1933) Gen. Laws (Deering, Supp. 1933); Act 4104; Colo. (1931) Comp. L. (Supp. 1932), Sec. 4204, Laws, 1933, c. 59; Idaho, Acts, 1933, c. 215; Ill. (1933) Rev. Stat. (Cahill, 1933), Ch. 48, Sec. 237; Ind. (1933) Ann. Stat. (Burns, 1933), Sec. 40-503; La. Acts, 1934, No. 202; Md. Laws, 1935, c. 574; Mass. Laws, 1933, c. 351; Minn. (1933) Stat. (Mason, Supp. 1936), Sec. 4260-3; N. J. Laws, 1932, c. 244; N. Y. (1935), Consol. Laws (Supp. 1931-1935), Ch. 7, Sec. 17; N. Dak., Laws, 1935, c. 247; Ohio (1931) Gen. Code (Supp. 1926-1935), Part Second, Title II, ch. 17, Sec. 6241-1; Ore., Acts, 1931, c. 247, Acts, 1933, c. 355; Penna. (1933) Ann. Stat. (Purdon, pocket Supp. (1934)), Title 43, Sec. 205; Utah, Laws, 1933, c. 15; Wash., Laws, 1934, c. 7; Wis., Statutes, Sec. 103.46 (1929), Statutes (1933), Sec. 268.19. See also *United Mine Workers* v. *Coronado Coal Company*, 259 U. S. 344, 385-386.

coerce, restrain or discriminate against employees because of their exercise of recognized liberties. It does not compel organization into labor unions, or establish a closed shop.[50] As the court below pointed out (R. 445), the Act does not destroy or restrict any right of the employer which is important to the normal operation of his business. He retains full powers of management. He may discharge his workers for inefficiency, insubordina-

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[50] The proviso in Section 8, subsection (3) does not validate the closed shop agreement or force a closed shop on anyone. It merely declares that nothing in this Act shall *invalidate* such an agreement. The closed shop agreement is valid in New York (*Jacobs* v. *Cohen*, 183 N. Y. 207) and in other States in which petitioner operates. Congress did not wish to establish a uniform rule on this question, since the applicable law varied throughout particular localities, and consequently through this proviso, merely preserved the *status quo*. Under no circumstances can a closed shop agreement be made without the consent of the employer, since this is merely a matter for negotiation in the same manner as a request for higher wages or better working conditions. H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 19–20; Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 11–12. Moreover, no question of closed shop is involved in the case at bar and the issue of the validity of the proviso could properly arise only on the objection of an employee adversely affected. *Jeffrey Manufacturing Co.* v. *Blagg*, 235 U. S. 571.

Petitioner's contention in this respect (Br. pp. 79–80) is reduced to this: that legislative protection of employees in their self-organization and choice of representatives, even as against the grossest forms of coercion and interference, is repugnant to the Fifth Amendment because it would have the tendency to lead to the closed shop (Br. pp. 78–79, 82). This argument is obviously unsound, and ignores the express ruling of this Court in the *Texas & New Orleans* case.

tion, or any other reason whatever except membership in or activity in connection with a labor organization. The employer retains unimpaired his liberty to reach any bargain as to the wages he will pay and the working conditions he will furnish. *S. Buchsbaum Co.* v. *Beman*, 14 F. Supp. 444, 448 (N. D. Ill.). Compare *Adkins* v. *Children's Hospital*, 261 U. S. 525; *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522; *Morehead* v. *Tipaldo*, 298 U. S. 587. Nor does the Act delegate a legislative power to fix wage rates to private parties. Compare *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 310–312. It merely protects the employees, if they desire to organize, against specific unfair labor practices.[51] Far from imposing

[51] Petitioner objects (Br. p. 66) that the Act "recognizes but one type of representative for the purpose of collective bargaining, namely, the independent labor organization, completely free from employer domination, interference, or any form of support." This is the substance of Section 8, subsection (2), which is not involved in this case. It is obvious that without such provision, the collective action of employees in choosing representatives would be reduced to a mockery. Similar forms of interference were prohibited in the *Texas & New Orleans* case, quoted *supra*, p. 82. However, the Act does not favor the "outside" labor organization, or any other particular form of organization. The term "labor organization" used throughout the Act is defined broadly in Section 2, subsection (5) to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

substantive terms of employment, the Act merely confirms and promotes the equal right of the employer and employees to adjust such terms by "private bargaining", and protects employees in their organization and choice of representatives for that purpose.

Petitioner argues that the Act is arbitrary because all its prohibitions are directed against employers (Br. pp. 77, 87–88). This argument ignores the realities of the situation and the essential purpose of the statute. Corresponding to the liberty of employees here given legislative protection against interference by employers, is the liberty of employers to organize and choose representatives for collective bargaining with employees. No claim has or could be made that this liberty of employers needs protection in Federal law. Congress was entitled to take cognizance of actual conditions and address itself to practicable measures; to safeguard, not ignore, the liberty of employees to associate and make of it an instrument of peace rather than of industrial strife. *Texas & New Orleans Railroad* v. *Brotherhood of Railway Clerks, supra,* at 570. In this respect the Act is no more "one-sided" than the Federal Employers' Liability Act or the Interstate Commerce Act. However, the Act weakens none of the employer's protections against any illegal action of employees or labor organizations under pre-existing law. The Act does not affect the application of the anti-trust laws to labor disputes,

nor the local police power. It leaves undisturbed existing statute and common law, both state and Federal, civil and criminal, in regard to picketing, intimidation, blacklisting, fraud, or violence by either side in labor disputes. Racketeering in the guise of labor activity to the extent of Federal power under the commerce clause, may be reached under the anti-trust laws (*Local No. 167* v. *United States,* 291 U. S. 293) and under a recent drastic criminal statute (C. 569, 48 Stat. 979; U. S. Code, Title 18, Sec. 420 (a)-(e)).[22]

Petitioner thus invokes "liberty of contract", not in order to be free to carry on the normal operations of its business, but in order to be free to interfere with the recognized liberties of its employees. This contention was swept aside by this Court in the *Texas & New Orleans* case, in these words (281 U. S. at 570):

> Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees,

[22] After careful consideration, Congress determined that the regulation of such practices was beyond the proper scope of this Act. See H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 16, 17; Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 16, 17. Regulation of such practices was likewise not included in the Railway Labor Act of 1926, upheld in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, and a suggestion to incorporate them in the amendments of 1934 was rejected. See *Ass'n of Rock Island Employees* v. *Louden*, 15 F. Supp. 176, 183 (D. Kan.), aff'd, 86 F. (2d) 458 (C. C. A. 10th).

instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.

III

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED TO PETITIONER, DOES NOT CONTRAVENE THE SEVENTH AMENDMENT

Petitioner assigns as error the failure of the court below to hold that the Act violates the Seventh Amendment to the Constitution. Its objection is based upon the provision of the decree which requires, pursuant to Section 10 (c) of the Act, that Watson, the discharged employee, be made whole for any loss of pay which he has suffered by reason of his unlawful discharge (R. 433). We submit that this is merely an incident of the equitable remedy for the prevention of unfair labor practices, and may properly be required without a trial by jury.

The relevant clause of the Seventh Amendment, by its very terms, applies only to "suits at common law"—*i. e.*, rights and remedies as they were generally known and enforced at common law by jury trial. *Shields* v. *Thomas*, 18 How. 253, 262; *Kohl* v. *United States*, 91 U. S. 367, 376–377; *Crowell* v. *Benson*, 285 U. S. 22, 45; *Baltimore & Carolina Line* v. *Redman*, 295 U. S. 654.

Manifestly, the prohibitions in this Act against interference by employers with the self-organization of their employees were unknown to the common law. *Pennsylvania Federation* v. *Pennsyl-*

vania R. Co., 267 U. S. 203, 210. Moreover, the primary remedy under the Act against such interference is an order, made by the Board and enforced by the Circuit Court of Appeals, to cease and desist from such practices. Such an order is in the nature of an injunctive decree.

The order for restoration of back pay is merely supplementary to these sanctions—a mere incident in the equitable remedy—included in order to effectuate the policy of the Act and to bring about as complete a restoration of the *status quo* as possible. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 24. A similar order in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, was held not to have gone beyond the proper enforcement of Section 2, third, of the Railway Labor Act of 1926. 281 U. S. at 571. See 25 F. (2d) 876, 878. The National Labor Relations Act thus is merely a specific authorization of action which courts of equity would normally take even without statutory authority.

Indeed, the cases specifically denying the applicability of the Seventh Amendment go much further than is necessary to sustain the order here in question. Jury trial consistently has been denied in private litigation where recovery of money damages is sought as an incident to equitable relief, and where such damages might have been recoverable independently in an action at law. *Clark* v. *Wooster*, 119 U. S. 232; *Pease* v. *Rathbun-Jones Engineering Co.*, 243 U. S. 273, 279; *Filer & Stowell*

Co. v. *Diamond Iron Works,* 270 Fed. 489 (C. C. A. 7th), certiorari denied, 256 U. S. 691. A jury trial is not required by the Amendment even in suits brought solely for a money judgment, if the claim arises in connection with a broader proceeding in equity (*Barton* v. *Barbour,* 104 U. S. 126, 133; *In re Wood,* 210 U. S. 246, 258), or if the award is "equitable in nature" under a statute which supersedes a common law right and leaves nothing to be tried by a jury (*Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 235; *Rowlette* v. *Rothstein Dental Laboratory,* 63 F. (2d) 150 (App. D. C.), certiorari denied, 289 U. S. 736), or if the procedure is not in the nature of or according to the modes and customs of the common law (*Guthrie National Bank* v. *Guthrie,* 173 U. S. 528, 537). See also Willoughby, *Constitution of the United States,* Vol. 2, p. 1156.

A full discussion of the questions raised with respect to the application of the Seventh Amendment to this Act is contained in the recent decision of the Circuit Court of Appeals for the Fifth Circuit, *Agwilines, Inc.* v. *National Labor Relations Board,* decided December 22, 1936. But see opinion of Wilbur, J., in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.* (C. C. A. 9th), decided January 11, 1937.

We submit, therefore, that the Seventh Amendment has no application.

IV

THE NATIONAL LABOR RELATIONS ACT AS HERE APPLIED DOES NOT VIOLATE THE GUARANTEE OF FREEDOM OF THE PRESS CONTAINED IN THE FIRST AMENDMENT

Petitioner contends that the application of the Act in this case constitutes a violation of the guarantee of the freedom of the press contained in the First Amendment. Br. pp. 96–102. It is submitted that the contention is without merit.

The guarantee of freedom of the press includes both the prohibition of previous restraints on publication, *Near* v. *Minnesota,* 283 U. S. 697, and "any action of the government by means of which it might prevent * * * free and general discussion of public matters." *Grosjean* v. *American Press Co.,* 297 U. S. 233. Admittedly a statute which lays a special burden on the press or has the intent of limiting either circulation or the free expression of opinion would be unconstitutional. But it has never been held that a valid statute of general applicability becomes invalid when applied to the press. A newspaper publisher does not have a special immunity from the application of general legislation nor a special privilege to destroy the recognized rights and liberties of others. Newspapers cannot claim immunity from laws prohibiting the utterance of libelous or obscene statements, *Robertson* v. *Baldwin,* 165 U. S. 275, 281, or from laws governing contempt of the courts, *Toledo Newspaper Co.* v. *United States,* 247 U. S. 402, or from the Anti-Trust Laws, *Indiana*

Farmer's Guide Publishing Co. v. *Prairie Farmer Publishing Co.*, 293 U. S. 268; *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission*, 13 F. (2d) 673 (C. C. A. 8th), or from taxes levied on business generally. *Cf. Grosjean* v. *American Press Co.*, 297 U. S. 233, 250. Particularly in the field of labor disputes has it been recognized that action otherwise unlawful may be restrained though carried on by publication or even speech. *Gompers* v. *Bucks Stove Co.*, 221 U. S. 418, 439; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 204–205; *Duplex Co.* v. *Deering*, 254 U. S. 443, 478. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 558, 571.

Petitioner does not contend that the National Labor Relations Act discriminates against the press or that it constitutes a device to limit the circulation of opinion under the guise of a regulation of commerce. Cf. *Grosjean* v. *American Press Co.*, *supra*. Indeed, far from interfering with the circulation of opinion, the Act facilitates that circulation by providing preventive measures against its interruption through strikes and other labor disturbances. The statute before the Court is intended to apply to certain aspects of business carried on in interstate commerce. Petitioner falls within its terms because it engages in interstate commerce and not because the commodity with which it deals happens to be news.

Petitioner is accordingly reduced to contending that the Act and the order of the Board violate the guarantee of freedom of the press because a member of a labor organization may be biased in editing the news in favor of labor and petitioner should be free to discharge employees who exhibit such bias. We admit without qualification that petitioner has a privilege, unaffected by this Act, to discharge an employee because he exhibits bias in editing the news. Certainly, the free circulation of opinion would be seriously impaired if the press could not discharge employees who have exhibited bias in news writing.

But neither the Act nor the order here involved constitutes the slightest infringement of petitioner's privilege in this respect. The statute goes no further than the requirement that petitioner refrain from interfering with its employees in their self-organization for collective bargaining, and consequently that petitioner refrain from discharging an employee for the reason that he belongs to a labor organization.

The order of the Board imposes no further restriction on the freedom of petitioner to discharge an employee for bias in editing news than does the Act. Watson, the only employee ordered to be reinstated, was never claimed by petitioner to have been discharged on account of bias. Ostensibly he was discharged "on grounds of his work not being on the basis for which he has shown capability" (R. 430). The Board found that in fact Watson was

discharged because of his activity as a member of a labor organization (*Ibid.*). This finding was affirmed by the court below (R. 440) and is not assigned as error in this Court. There is thus no basis for the contention that either the Act or the order in any way restricts petitioner's freedom to discharge employees for bias in editing news. The Board has made no attempt so to construe the Act and if any such application of the Act were to be made in the future, the guarantees of the First Amendment could be invoked.

Since neither the Act nor the order in any way abridges petitioner's privilege to discharge an employee for actual bias, petitioner's contention that the First Amendment has been violated comes down to this: that employees who belong to labor organizations must be conclusively presumed to be biased in their work, and that any legislation protecting the right of organization of editorial employees of a newspaper is of necessity a violation of the guarantee of freedom of the press. The proposition is obviously unsound. "Impartiality is not a technical conception. It is a state of mind". *United States* v. *Wood,* No. 34, decided Dec. 7, 1936. Petitioner itself has refuted the contention that mere membership in a labor organization constitutes bias on the part of an employee. In its brief, pp. 91–92, it claims that it does not discriminate against employees because of membership in the Newspaper Guild, denies discharging Watson for that reason and avers that other active

Guild members are still in its employ. If all this is true, it is difficult to take seriously petitioner's argument that its business of collecting and distributing news reports will be impaired or destroyed by a prohibition against a deliberate discharge of Watson because of his efforts in connection with the self-organization of the editorial employees for the purposes of collective bargaining.

The statute here under consideration guarantees and gives effective protection to the liberty of employees to organize for purposes of collective bargaining in order to eliminate the causes of industrial disputes which injure and disrupt interstate commerce. It imposes no restraint whatever on the free circulation of news, it does not in any way impede the conceded privilege of a news-gathering agency to discharge its employees for failure to live up to its standards of impartiality, and it cannot be considered in any way as a violation of the guarantee of freedom of the press.

V

THE APPLICATION OF THE ACT TO PERSONS OTHER THAN PETITIONER, AND THE VALIDITY OF PROVISIONS OTHER THAN THOSE INVOKED AGAINST PETITIONER, NEED NOT BE CONSIDERED SINCE PETITIONER HAS NO STANDING TO RAISE SUCH QUESTIONS; IN ANY EVENT, SUCH POSSIBLE APPLICATIONS AND SUCH OTHER PROVISIONS ARE SEPARABLE FROM THOSE HERE IN ISSUE

The order of the Board here in question is based upon two specific unfair labor practices, defined in subsections (1) and (3) of Section 8, and is di-

rected to an employer engaged in interstate and foreign commerce. This is the specific and only application of the Act in issue here. That application, we have argued above, is constitutional.

Petitioner, however, steps outside the facts of the case and contends that even though the order here involved be within the power of Congress, that order must be set aside and the statute held invalid *in toto* because (1) the Act applies to all industry and all employees and is not limited to the scope of the federal commerce power (Br. pp. 18–36), and because (2) liberty of contract is violated by certain provisions not directly involved here, notably Section 8 (5), making it an unfair labor practice for an employer to refuse to bargain collectively with his employees, subject to the provisions of Section 9 (a), making representatives selected by the majority of the employees the exclusive representatives for collective bargaining purposes (Br. pp. 82–89). We contend, first, that petitioner has no standing to assert the Act's unconstitutionality in particulars, or in its application to persons and situations, other than those directly here in issue, and second, even if petitioner may raise these questions, the validity of those provisions and applications is not material in the present case because of their separability.

A. *The Constitutionality of the Act's Application to Classes of Persons Other Than Petitioner and the Constitutionality of Provisions of the Act Not Sought To Be Applied to Petitioner Are Matters of Which Petitioner May Not Complain*

It is a salutary and long established principle that no question of constitutional law will be adjudged "in advance of the necessity of deciding it." *Wilshire Oil Co.* v. *United States,* 295 U. S. 100; *Abrams* v. *Van Schaick,* 293 U. S. 188. For this reason, the Court has stated, on numerous occasions, that one who seeks to strike down a statute, state or federal, must show "that he is within the class of persons with respect to whom the statute is unconstitutional and that the alleged unconstitutional feature injures him." *Heald* v. *District of Columbia,* 259 U. S. 114, 123. Or, as the Court said in *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 289: "a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage." See also *Premier-Pabst Sales Co.* v. *Grosscup,* 298 U. S. 226; *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324–325; *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 186; *Dillingham* v. *McLaughlin,* 264 U. S. 370, 374; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 43; *Rindge* v. *Los Angeles County,* 262 U. S. 700, 709; *Hatch* v. *Reardan,* 204 U. S. 152, 160; *Tyler* v. *Judges,* 179 U. S. 405.

Since Section 8 (5) is not in any way a basis for the present action of the Board, petitioner cannot show that "the alleged unconstitutional feature injures" it and therefore cannot attack this provision. And since petitioner is not within any "class of persons with respect to whom the statute is unconstitutional", it may not complain of the Act's application to others. Petitioner, therefore, lacks the requisite standing to ask for an adjudication of the Act's validity in the respects here urged. Such a decision is wholly unnecessary to a determination of the issues here involved. We submit that contentions going beyond the circumstances of the case at bar should be disregarded.

B. *In Any Event, the Applications or Provisions of the Act to Which Petitioner Objects Are Clearly Separable*

Although the constitutional validity of the applications or provisions to which petitioner objects are not in issue, their validity *vel non* is immaterial, for they are separable from the other provisions or applications which, under petitioner's hypothesis, must be assumed to be valid.

1. *The Scope of the Act*

It is difficult to understand petitioner's contention that the Act applies to all industry and all employees. The Act is, in terms, limited to the prevention of unfair labor practices "affecting commerce" (Section 10 (a)), that is, "in commerce, or

burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (Section 2 (7)). And the definition of "commerce" as "trade, traffic, commerce, transportation, or communication among the several states" (Section 2 (6)), is manifestly based upon the decisions of this Court defining the scope of the commerce power. With jurisdiction so carefully delimited, it is obvious that the Act does not apply to all employers and employees. See Brief for the Board in No. 419, *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, pp. 33–40. Moreover, the Act has no automatic or specific application to any particular employer or employees, or classes thereof. The jurisdictional requirements of subsections (6) and (7) of Section 2 must always be met, and the Board's findings with respect thereto are subject to full review in the circuit courts of appeals and ultimately in this Court. Should the Board err in its application of the Act, the courts will correct the error by holding that the order exceeded the Act, not that the Act exceeded the commerce power.[53] In the matter of its jurisdiction, there-

[53] In all but one of the cases in the circuit courts of appeals in which enforcement of the Act has been denied, this construction of the Act has been the basis of the decision. *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co., Inc.*, 85 F. (2d) 1 (C. C. A. 2d), Nos. 422, 423, October Term, 1936; *Foster Bros. Mfg. Co.* v. *National Labor Relations Board*, 85 F. (2d) 984 (C. C. A. 4th); *National*

fore, the Act is like the anti-trust statutes—particularly the Federal Trade Commission Act—which in terms apply neither to industry generally nor to any particular enterprise or class thereof.

Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 83 F. (2d) 998 (C. C. A. 5th), No. 419, October Term, 1936; *Fruehauf Trailer Co.* v. *National Labor Relations Board*, 85 F. (2d) 391 (C. C. A. 6th), Nos. 420, 421, October Term, 1936. In *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.* (C. C. A. 9th), decided January 11, 1937, one judge held the Act unconstitutional in part under the Fifth Amendment, although stating that he considered it an otherwise valid regulation of commerce as applied to that respondent; another judge concurred on the merits without passing on the constitutionality of the Act; and the third judge, dissenting, held the Act constitutional.

In other cases, three of the circuit courts of appeals mentioned in the preceding note, including the court below, have held that the Act is constitutional and has an area of valid application under the commerce clause. *National Labor Relations Board* v. *National N. Y. Packing Co.*, 86 F. (2d) 98 (C. C. A. 2d); *Washington, Virginia and Maryland Coach Company* v. *National Labor Relations Board*, 85 F. (2d) 990 (C. C. A. 4th), No. 469, October Term, 1936; *Bradley Lumber Company* v. *National Labor Relations Board*, 84 F. (2d) 97, 99 (C. C. A. 5th), certiorari denied, No. 153, Oct. 12, 1936; *Agwilines, Inc.*, v. *National Labor Relations Board*, decided Dec. 22, 1936 (C. C. A. 5th). See also, *National Labor Relations Board* v. *New England Transportation Co.*, 14 F. Supp. 497 (D. Conn.); *S. Buchsbaum & Co.* v. *Beman*, 14 F. Supp. 444, 447–8 (N. D. Ill.); *Precision Castings Co.* v. *Boland*, 13 F. Supp. 877, 885 (W. D. N. Y.), aff'd, 85 F. (2d) 15 (C. C. A. 2d); *Heller Bros. Co.* v. *Lind*, decided April 2, 1936 (Sup. Ct. D. C.), aff'd, Nov. 9, 1936 (App. D. C.); *Associated Press* v. *Herrick*, 13 F. Supp. 897, 898 (S. D. N. Y.).

It has always been recognized that Congress by this Act intended to remain within the limits of its power under the commerce clause, as judicially delimited. The report of the Senate committee states that the Act "does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the Courts." Sen. Rep. No. 573, 74th Cong., 1st Sess., p. 19. The report of the House committee is substantially to the same effect. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 10. See also 79 Cong. Rec. pp. 7572, 9698. And the Act was so understood by the Chief Executive at the time he approved it. "This Act * * * must not be misinterpreted * * *. It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct commerce." *Statement of the President on Approving the National Labor Relations Act*, July 5, 1935.[54] Indeed, any inference to the contrary[55] must be rejected under the principle that

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[54] *First Annual Report of the National Labor Relations Board* (1936) p. 9.

[55] Petitioner cannot avoid the basic jurisdictional provisions of subsections (6) and (7) of Section 2 by efforts to draw contrary inferences from the definitions of "employer" and "employee" contained in subsections (2) and (3) of Section 2. Br. p. 25. Those definitions have no bearing upon the jurisdiction of the Board, which is determined by subsections (6) and (7). See H. Rep. No. 1147, 74th Cong., 1st Sess., p. 10; Sen. Rep. No. 573, 74 Cong., 1st Sess., p. 7. This is a wholly reasonable and not unusual method of drafting a federal law. Moreover, to have utilized subsections

the Act should not be given a broad construction if its validity can be sustained by a narrow and reasonable one. *Sproles* v. *Binford,* 286 U. S. 374, 392; *Crowell* v. *Benson,* 285 U. S. 22, 62; *United States* v. *Chicago, Milwaukee, St. Paul and Pacific R. R. Co.,* 282 U. S. 311, 326; *Federal Trade Commission* v. *American Tobacco Company,* 264 U. S. 298, 307; *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 401. See also *Arizona* v. *California,* 283 U. S. 423, 456; *Stephenson* v. *Binford,* 287 U. S. 251, 276. It is immaterial, therefore, that some of the proponents of the Act in Congress, or even that Congress itself hoped that the Act would have a broader application than is determined by this Court to be valid under the commerce clause. *Ann Arbor R. Co.* v. *United States,* 281 U. S. 658, 668–669; *United States* v. *New York Central R. R. Co.,* 263 U. S. 603, 610–611.

Finally, it cannot be urged that the Act, which is thus limited, is invalid in that it has, in practice, been applied to all industry. The argument is based upon a complete misapprehension of the facts, for the Board, in its consideration of specific cases as well as in its administration of the Act generally, has recognized throughout that the requirements of subsections (6) and (7) of Section 2 must be satisfied, and has never assumed that the

(2) and (3) for jurisdictional purposes might have resulted in unduly restricting the Act's application in the District of Columbia and the Territories. Cf. *El Paso & N. E. Ry.* v. *Gutierres,* 215 U. S. 87, 93–94.

Act was one of general application. In numerous cases the Board has refused to entertain charges which it considered to be beyond its jurisdiction, and in several cases a complaint has been issued and subsequently dismissed by the Board for lack of jurisdiction on the basis of the facts disclosed at the hearing.[44] In many of the cases which come

[44] This question is discussed in detail in the First Annual Report of the National Labor Relations Board (1936) pp. 135–137. The report cites Section 2 (6) and 2 (7) of the Act, and concludes from these provisions "that the Act was not intended to apply to all industry or labor, but rather that the Board's jurisdiction is co-extensive with Congressional power to legislate under the commerce clause of the Constitution (apart from the District of Columbia and the Territories, where Congressional power is plenary)." (p. 135.) After discussing various classes of cases to which the Act may or may not be applied, the Report states: "To October 1, 1936, there were 1,551 charges and petitions brought to the attention of the Board. 1,059 of these cases had been closed on October 1, in the following manner: 498 were closed by agreement of both parties. 153 cases were dismissed by the Board and the regional directors before the issuance of a formal complaint. 343 cases were withdrawn by the parties filing them with the Board before formal action was taken by the Board. Of the 153 cases dismissed by the Board and the regional directors at least 71 were dismissed without formal action because the regional directors did not consider that the unfair labor practices affected commerce within the meaning of the act. Many of the 343 cases withdrawn before formal action by the Board were withdrawn because of advice by the regional directors that the Board would not take jurisdiction for the same reason. It is at this stage, and before formal complaint is issued, that the great elimination of cases occurs for lack of jurisdiction; nevertheless the minutes of the Board at Washington show that in executive meeting the Board itself had occasion to refuse to issue com-

before the Board, such as those involving an employer and employees engaged in interstate commerce, and those involving enterprises within the territories and the District of Columbia, it can scarcely be urged that the application of the Act is in excess of the power of Congress. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *El Paso & N. E. Ry.* v. *Gutierrez*, 215 U. S. 87. As to other cases, the question may be debatable, but may safely be left to the Board and to the courts for decision under the statutory procedure on the respective administrative records, as in the case of orders issued by the Federal Trade Commission. The Court, like the Board, is concerned here only with the application to this respondent. *Ashwander* v. *Valley Authority*, 297 U. S. 288, 324; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226.

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plaints in six cases, and directed regional directors to seek withdrawals in six other cases, because of such lack of jurisdiction. In four cases trial examiners, after hearing, dismissed complaints for lack of jurisdiction and the cases were closed. The employees affected accepted the trial examiner's ruling that commerce was not affected within the meaning of the act.

"Neither the regional directors nor the Board issue complaints without a rather full investigation of the facts bearing upon the commerce issue.

"The ultimate decision on questions of constitutional and statutory jurisdiction under this act is for the courts in each case as it arises. Decisions by the Supreme Court in a number of test cases now pending will shed light on the valid scope and application of the act, and serve as authoritative guides for the Board in its administration" (pp. 136–137).

We submit, therefore, that it cannot be urged that the statute is unconstitutional as applicable on its face to matters that are within and matters that are without the power of Congress, as in the *Trade Mark Cases,* 100 U. S. 82, the *Employers' Liability Cases,* 207 U. S. 463, and *United States* v. *Reese,* 92 U. S. 214. Here the Act is limited in its terms, by appropriate language, only to those matters over which Congress has control, which was not true of the general and indivisible language of the statutes involved in the above cases. Should an order of the Board be held inapplicable under the commerce power to some situations, no rewriting or interpolation of limiting words would be required in any respect. The substantive and procedural provisions of the Act would remain intact. Thus the Act, in any event, would operate as written in such important fields as interstate water transportation, radio broadcasting, telephone and telegraph communication, pipe lines, motor transportation, and the like, as well as in the District of Columbia and the territories. Moreover, this was the intent of Congress. Section 15 specifically declares that the invalidity of the "application" of the Act "to any person or circumstance" should not render the Act invalid with respect "to persons or circumstances other than those as to which it is held invalid."

2. *The Separability of Alleged Invalid Provisions*

In considering the separability of alleged invalid provisions of a statute, the test is whether the constitutional provisions, standing alone, "can be given legal effect", and whether "the legislature intended the unobjectionable provision to stand in case other provisions held bad should fall." *Lynch* v. *United States,* 292 U. S. 571, 586; see also *Dorchy* v. *Kansas,* 264 U. S. 286, 290. "The point is * * * whether they are essentially and inseparably connected in substance—whether the provisions are so interdependent that one cannot operate without the other." *Loeb* v. *Columbia Township Trustees,* 179 U. S. 472, 490; *Berea College* v. *Kentucky,* 211 U. S. 45, 55–56. See also *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 312–313.

The fifth unfair labor practice, dealing with refusal to bargain collectively with the representatives designated by a majority of employees in the appropriate unit, is not so "inseparably connected" with the first four that the latter could not "operate without" Section 8 (5). We of course contend, for reasons similar to those set forth in the Government's brief as *amicus curiae* in No. 324, *Virginian Ry. Co.* v. *System Federation No. 40,* that Section 8 (5) is a valid regulation of commerce and does not deny due process. But if Section 8 (5) were, for any reason, held unenforceable, it would not be necessary to make any amendments to the sections prescribing the unfair labor practices involved in the case at bar, or to any of the

procedural provisions. All that Congress could do in such a case, if it set about actually to amend the statute to conform with the decision, would be to strike subsection (5) from the Act.

Complete support for this position is found in the decision in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. There the Court was concerned solely with those provisions of the Railway Labor Act which prohibited interference with employees in their self-organization and choice of representatives, the issues raised in the instant case. The Railway Labor Act then, as now, contained a provision requiring the carriers to exert every reasonable effort to make and maintain agreements with the representatives of their employees (Sec. 2, first; U. S. C., Title 49, Sec. 152, first subdivision), the essence of the allegedly invalid subsection (5) of the present Act. The Court did not decide whether this general declaration of the duty of carriers and employees to make reasonable efforts to enter into agreements was of imperfect obligation. But the Court had no hesitation in upholding as a valid regulation under the commerce clause the definite prohibitions against interferences with the employees in their free choice of representatives. It is plain, therefore, that subsections (1) and (3) of the present Act can operate as intended and be given full legal effect regardless of subsection (5).

The remaining question is whether Congress intended that the first four specific unfair labor

practices should fall if the fifth should be declared unenforceable. Congress, we submit, expressed itself adequately upon this matter in the separability provision contained in Section 15. While this provision is not an "inexorable command", it "clearly evidences the intention of the Congress not only that an express provision found to be unconstitutional should be disregarded without disturbing the remainder of the statute, but also that any implication from the terms of the Act which would render them invalid should not be indulged." *Crowell* v. *Benson,* 285 U. S. 22, 63; see also *Champlin Refining Co.* v. *Commission,* 286 U. S. 210, 234–235; *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 184–185.

The presumption of separability evidenced by this section is buttressed by other considerations. The various unfair labor practices are listed separately in the Act. It is the obvious intention that they be applied and enforced separately, as has been done in this case. There is no requirement in the Act that petitioner or any employer be found to have engaged in all the listed unfair labor practices; the prevention of *each* of them is but a *different method* of protecting rights guaranteed by Section 7.

The contention that Congress would not have enacted the law if subsection (5) were invalidated disregards the fact that interference with self-organization and choice of representatives is in itself an important cause of industrial strife

which Congress could remove or prevent. Moreover, the incorporation in subsection (5) of an express duty on the employer to bargain collectively with the representatives of the majority of employees in the appropriate unit is not the exclusive or essential method of protecting the exercise by employees of the right of collective bargaining. On the contrary, that right is effectively fostered through subsections (1) and (3) of Section 8, by protecting employees against interference and restraint in its exercise and by safeguarding the rights of self-organization and free choice of representatives. This conclusion is confirmed by experience (*supra*, pp. 45 *et seq.*), and is the very basis of the principles declared in the *Texas & New Orleans* case. The Court there said that employees had the right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work, and that the prohibition against interference with choice of representatives was based upon a recognition of the right of collective bargaining and prevented its exercise from being reduced to a mockery. 281 U. S. at p. 570. The omission of subsection (5) thus would not have deprived employees of essential protection in collective bargaining or otherwise have seriously impaired the policies of the Act. It seems clear that Congress, if faced with a choice, would have enacted the statute without subdivision (5), which is but an additional means of accom-

plishing one of the purposes of the Act—to protect the right of collective bargaining. Petitioner's argument comes to this: that self-organization, freedom in choice of representatives, and collective bargaining may not be protected and furthered unless collective bargaining, with majority rule, is made compulsory. Obviously, this position is untenable, and cannot be imputed to Congress.

Cases like *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, and *Wolff Packing Co.* v. *Kansas Industrial Court*, 262 U. S. 522, are not controlling here. The statutes there involved had, as their foundations, the pooling system of reserves and compulsory arbitration, respectively. The decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, holding inseparable the labor and price provisions of the Bituminous Coal Conservation Act, is likewise not in point. There the Court found that the price and wage provisions were "so woven together as to render the probability plain enough that uniform prices, in the opinion of Congress, could not be fairly fixed or effectively regulated, without also regulating these elements of labor which enter so largely into the cost of production" (p. 315). The present case, on the other hand, involves the validity of particular provisions which, as we have fully shown above, are independent of the provisions claimed to be invalid. It is controlled, therefore, by such rulings on separability as *Champlin Refining Co.* v. *Commission*,

286 U. S. 210, 234–235, and *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184–185.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the court below should be affirmed.

Respectfully submitted.

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JANUARY 1937.

APPENDIX

THE NATIONAL LABOR RELATIONS ACT (ACT OF JULY 5, 1935, C. 372, 49 STAT. 449; U. S. C. SUP. I, TITLE 29, SEC. 151 ET SEQ.)

AN ACT To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the pur-

pose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive

Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The

[1] So in original.

Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules

and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with

a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other

[1] So in original.

means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor

practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the

pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonble grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the

court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board

as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that re-

lates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be

prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records,

papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons

or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

Major issues involved in labor disputes beginning in each year from 1919 to June 1936

Year	Total	Wages and hours		Organization [1]		Miscellaneous [2]	
		Number of disputes	Percent of total	Number of disputes	Percent of total	Number of disputes	Percent of total
1919	3,[illegible]	2,036	56	874	24	720	20
1920	3,[illegible]	2,[illegible]	60	652	19	721	21
1921	2,[illegible]	1,[illegible]	63	400	17	484	20
1922	1,[illegible]	[illegible]	52	226	21	303	27
1923	1,[illegible]	721	46	315	20	517	34
1924	1,240	517	43	282	20	460	37
1925	1,[illegible]	527	41	223	17	541	42
1926	1,035	475	46	222	21	335	33
1927	734	360	49	224	30	150	21
1928	639	306	49	190	30	133	21
1929	908	414	46	312	34	177	20
1930	653	317	49	219	33	117	18
1931	894	504	56	255	29	135	15
1932	806	534	66	172	21	102	13
1933	1,[illegible]	985	60	447	29	180	11
1934	1,856	727	39	853	46	276	15
1935	2,014	769	38	962	47	293	15
1936 (Jan.–June)	962	348	36	462	48.5	147	15.5

[1] Includes interference with employee organization, discrimination, etc.

[2] Includes sympathy, jurisdiction, etc.

Compiled from statistics published by the U. S. Bureau of Labor Statistics in Monthly Labor Review (July 1934), table 9, p. 78; (May 1935), p. 1267; (January 1936) table 5, p. 162; May (1936), table 6, p. 1308; and Monthly Labor Reviews for May–Oct. 1936, Monthly Reports on Industrial Disputes. Data for 1934–1936 are not strictly comparable to that of previous years. Beginning in November 1934, the Bureau of Labor Statistics introduced more accurate and complete methods of compiling the statistics. See *Monthly Labor Review* (January 1936) p. 1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD.

BRIEF OF ARTHUR MARKEL, DEPUTY PRESIDENT OF COMMERCIAL TELEGRAPHERS' UNION, ON BEHALF OF COMMERCIAL TELEGRAPHERS' UNION, AS AMICUS CURIAE

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Printed by Law Reporter Ptg. Co., 518 6th St., Washington, D. C.

INDEX.

PAGE

Question Involved 2

The National Labor Relations Act Is Necessary to Protect Employees in Interstate Commerce in Their Right to Collective Bargaining 2

The Guarantee of Freedom of Speech and Freedom of the Press Is Not Abridged by the Act 6

Conclusion 7

CASES CITED.

Buttfield v. Stranahan (192 U. S. 470, 24 S. Ct. Rep. 349) 3

Carter v. Carter Coal Co. (80 L. ed. Adv. Ops. 749) 3, 4

Dartmouth College v. Woodward (4 Wheat. 518) 3

Fisher's Blend Station v. Tax Commission (80 L. ed. Adv. Ops. 615, decided March 30, 1936) 2

Grosjean v. American Press Co. (80 L. ed. Adv. Ops. 459, 465) 7

Hamilton v. Kentucky Distilleries Co. (251 U. S. 146, 156) 5

Jacob Ruppert v. Caffey (251 U. S. 264) 5

Liberty Warehouse Co. v. Burley Tobacco G. Co-op. M. A. (276 U. S. 71, 97) 6

Life & Casualty Insurance Co. v. McCray (291 U. S. 566, 78 L. ed. 987) 3

Lindsley v. Natural Carbonic Gas Co. (220 U. S. 61, 78, 31 S. Ct. 337, 55 L. ed. 369, Ann. Cas. 1912 C, 160) 6

Miller v. Wilson (236 U. S. 373, 380, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915 F, 829) 6

Morehead v. New York, ex rel. Tipaldo (297 U. S. —, 80 L. ed. Adv. Ops. 921) 3

Ogden v. Saunders (12 Wheat. 213) 3

Purity Extract Co. v. Lynch (226 U. S. 192, 201, 202) 4, 5

Schechter Corp v. United States (295 U. S. 495, 79 L. ed. 1570) 3

St. Joseph Stock Yards Co. v. United States (80 L. ed. Adv. Ops. 679, 685) 5

Texas & New Orleans Railroad Co. v. Brotherhood of Railway Clerks (281 U. S. 548) 3

Western Union Telegraph Co. v. Boegli (251 U. S. 315) 2

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BRIEF OF ARTHUR MARKEL, DEPUTY PRESIDENT OF COMMERCIAL TELEGRAPHERS' UNION, ON BEHALF OF COMMERCIAL TELEGRAPHERS' UNION, AS AMICUS CURIAE

To the Honorable, the Chief Justice and the Associated Justices of the Supreme Court of the United States:

Arthur Markel, Deputy President of the Commercial Telegraphers' Union (a constituent body of the American Federation of Labor), on behalf of the Commercial Telegraphers' Union, files this brief because the questions involved in this case are of great importance to that Union, to other labor unions and to all persons engaged in Interstate Commerce.

The Commercial Telegraphers' Union has a membership of approximately 4,500, most of whom are engaged in the transmission of news and other data in interstate commerce. Two employers of its members, the leading telegraph companies, have been held by this Court to be engaged in Interstate Commerce, and have been regulated by Congress since the Act of June 18, 1910, C. 309, 36 Stat. 545, bringing telegraph companies under the Act to Regu-

late Commerce and under the administrative control of the Interstate Commerce Commission.

Western Union Telegraph Company v. Boegli (251 U. S. 315).

Other members of the Commercial Telegraphers' Union are engaged in the "Traffic Department" of the petitioner and of the other press services in the transmission of news throughout the states.

QUESTION INVOLVED

The broad question involved is whether Congress admittedly having the right to protect employees engaged in Interstate Commerce in their right to collective bargaining can make such collective bargaining a reality by compelling the employer to recognize representatives chosen by a majority of the employees.

THE NATIONAL LABOR RELATIONS ACT IS NECESSARY TO PROTECT EMPLOYEES IN INTERSTATE COMMERCE IN THEIR RIGHT TO COLLECTIVE BARGAINING.

There should be no question here as to the applicability of the commerce clause to the petitioner. The National Labor Relations Board found, upon competent evidence, that Morris Watson and the other editorial employees of petitioner at its New York office were directly engaged in interstate and foreign commerce by directing, facilitating and making possible the flow of news from place to place throughout this country and other countries; and any interference with or cessation of such activities would hamper, impede, and interfere with such commerce (R. 616).

The transmission of news by petitioner across state lines is no different than the broadcasting of radio programs, which was held to be interstate commerce in Fisher's Blend Station v. Tax Commission (80 L. ed. Adv. Ops. 615), decided March 30, 1936.

Nor is there any substantial issue as to the power of Congress to protect the liberty of employees in their choice to engage in collective bargaining.

Texas and New Orleans Railroad Co. v. Brotherhood of Railway Clerks (281 U. S. 548), we submit, settled this issue. The decisions in the Schechter Corp. v. United States (295 U. S. 495, 79 L. ed. 1570), Morehead v. New York ex rel. Tipaldo (297 U. S. —, 80 L. ed. Adv. Ops. 721), and Carter v. Carter Coal Co. (80 L. ed. Adv. Ops. 746) also do not modify or change the rule laid down in the Texas and New Orleans case.

This Court has unconditionally recognized the right of employees to bargain collectively as one to be protected by Congress under the Fifth Amendment. The power to protect this constitutional right of employees must include the power to make that right an effective one, and the means required to furnish adequate protection must, of necessity, be left to the sound discretion of the legislature, and unless such means are patently violative of rights enjoyed by employers or others the statute must be given the benefit of the presumption of constitutionality afforded to all statutes of Congress.

> Buttfield v. Stranahan (192 U. S. 470);
> Dartmouth College v. Woodward (4 Wheat. 518);
> Life & Casualty Insurance Co. v. McCray (291 U. S. 566);
> Ogden v. Saunders (12 Wheat. 213).

The purpose of the National Labor Relations Act is proper. The means used to accomplish that purpose have a reasonable relation to the end sought to be accomplished. The purpose being proper, the means for its accomplishment are within the judgment of the Congress.

> "With the wisdom of the exercise of that judgment the Court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit

of legislative power has been transcended. To hold otherwise would be to substitute judicial opinion of expediency for the will of the legislature, a notion foreign to our constitutional system."

Purity Extract Co. v. Lynch (226 U. S. 192, 201, 202);

Cf.: Carter v. Carter Coal Co. (80 L. ed. Adv. Ops. 749).

Congress adopted the National Labor Relations Act as a means to effectually protect the right of employees to collective bargaining. It gives the employees nothing to which they are not entitled under the Constitution. It protects rights already afforded them by the Constitution. It would be vain to say that the employees must be protected in their rights to collective bargaining but that Congress cannot make this protection effective.

> "It is also well established that, when a State exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, *it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective.*" Purity Extract Co. v. Lynch (226 U. S. 192, 201).

Congress found that without the provisions of the National Labor Relations Act employers denied to employees the right to organize and refused to engage in collective bargaining with them. These conditions, Congress found, resulted in industrial strife and interfered with the flow of commerce. It thus became necessary for Congress to make effective the constitutional right of the employees and this it did by the National Labor Relations Act. This action of Congress transcends no right of the employer. It takes from the employer no property. It denies to the employer no right to discharge an employee except where such discharge is for the purpose of defeating the right to collective bargaining. It fixes no hours of labor or wages. It interferes with no fundamental right of the employer and it does not infringe upon the freedom of the press or free-

dom of speech. It does not deny to the employer the right to make contracts with its employees but gives to the employees a power to bargain collectively with the employer—a necessary incident to the constitutional right of the employee to join an organization of his own choice without interference. Congress unquestionably has the power to place upon the employer such conditions as are necessary to protect the employees in their constitutional rights. In other words, if Congress finds that it must regulate the activities of the employers so as to give force to its power to protect employees it can not be said that such conditions imposed on the employer are beyond the power of Congress. To do so would in effect take from Congress its power to protect the employees.

> "When the legislature itself acts within the broad field of legislative discretion, its determinations are conclusive." St. Joseph Stock Yards Co. v. United States (80 L. ed. Adv. Ops. 679, 685.)

The exercise of restraint upon the employers is analogous to the prohibition of non-intoxicating liquors in order to make the administration of prohibition effective. The war power which gave Congress power to regulate the liquor traffic carried with it the power to prohibit the sale of *non-intoxicating liquor* even though the Tenth Amendment reserved that right to the States and there was a taking of property without compensation.

> "It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government." Purity Extract Co. v. Lynch (226 U. S. 192, 201, and cases cited therein.)
>
> Cf.: Hamilton v. Kentucky Distilleries Co. (251 U. S. 146, 156);
>
> Jacob Ruppert v. Caffey (251 U. S. 264).

The rule has been extended to a restriction of the "liberty of contract" of individuals where such restriction was necessary to protect contracts which the legislature deemed of great importance to the public. "Liberty of contract" is not an absolute right. It may be subject to invasion.

See Liberty Warehouse Co. v. Burley Tobacco G. Co-Op. M. A. (276 U. S. 71, 97), in which the Court stated:

> "The liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest. The question is whether the re-restrictions of the statute have reasonable relation to a proper purpose. Miller v. Wilson (236 U. S. 373, 380, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915F, 829); Lindsley v. Natural Carbonic Gas Co. (220 U. S. 61, 78, 31 S. Ct. 337, 55 L. ed. 369, Ann. Cas. 1912, C, 160.) • • •"

THE GUARANTEE OF FREEDOM OF SPEECH AND FREEDOM OF THE PRESS IS NOT ABRIDGED BY THE ACT.

The guarantee of freedom of speech and the freedom of the press afforded by the first amendment is cherished by this Union. It believes that guarantee vital to the preservation of our democratic form of Government. It is anxious to preserve that guarantee untrammeled by interference of any sort and if the Act involved in this case abridged the constitutional guarantee of freedom of speech and freedom of the press it would be among the first to seek the annulment of the Act, but a study of the National Labor Relations Act discloses that it does not infringe upon the first amendment in any particular.

Nowhere is there any requirement that the Associated Press employ anyone who does not have the qualifications necessary to carry out its news policy. The National Labor Relations Act does not limit or restrict the rights of the Associated Press to employ whomever it pleases and at such wages or conditions of labor as may be agreed upon between

it and the employees acting through representatives of their own choice.

It is fundamental that no citizen can claim immunity from laws general in scope merely because that citizen may be engaged in the dissemination of news. "Freedom of speech" and "free press" import no freedom from general obligations imposed upon citizens of all classes. This was pointed out in Grosjean v. American Press Company (80 L. ed. Adv. Ops. 459, 465), in which the court said:

> "It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. * * *"

There is no relationship between the right of employees to free choice of association for purposes of collective bargaining and the guarantee of freedom of speech and the freedom of the press. We cannot take seriously petitioner's argument that "This freedom is seriously jeopardized by the provisions of the Labor Relations Act."

CONCLUSION.

We respectfully submit that the National Labor Relations Act as applied to the petitioner, the Associated Press, is not in violation of the Constitution and that the decision of the Circuit Court of Appeals should be affirmed.

Respectfully,

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Munsey Building, Washington, D. C.

MAURICE FRIEDMAN,
Of Counsel.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

BRIEF FOR AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AS AMICUS CURIAE

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BYRON PRINTING COMPANY, INC., WASHINGTON, D. C.

INDEX.

PAGE

Statement of the Case 1
Interest of the Amicus Curiae 4
Question Presented 4
Statutes and Constitutional Provisions Involved 4
Argument 7

I. The First Amendment to the Constitution of the United States prohibits Congress from abridging the freedom of the press or fettering the essential processes in the production of a newspaper. Since Congress has no such power, it has none to delegate to any legislative agency 7

A. The predominant purpose of the grant of immunity in the First Amendment was to preserve an untrammeled press as a vital source of public information 7

B. The National Labor Relations Act, as applied to the instant case, destroys the principle of a free press as guaranteed by the First Amendment 11

II. The National Labor Relations Act is repugnant to the Fifth Amendment to the Constitution 17

A. The law here in controversy abolishes the right of an individual to contract for his own services 17

B. The Act deprives the employer of the right to make contracts about his affairs 18

C. The statute contains no mutuality 20

III. The National Labor Relations Act constitutes a delegation of power repugnant to the Constitution of the United States 21

IV. The investigatory powers vested in the Board are repugnant to the Fourth Amendment to the Constitution 23

Conclusion 26
APPENDIX A 28
The National Labor Relations Act 28

CITATIONS.

Cases.

PAGE

Adair v. United States, 208 U. S. 161 (1908) 18
Boyd v. United States, 116 U. S. 616 (1886) 24
Carter v. Carter Coal Company, 298 U. S. 238 (1936) ..18, 22
Coppage v. Kansas, 236 U. S. 1 (1915) 17
De Jonge v. Oregon, No. 123 U. S. Sup. Ct., Jan. 4, 1937 ..... 10, 26
Federal Trade Commission v. American Tobacco Company, 264 U. S. 298 (1924) 24
Grosjean v. American Press, Inc., et al., 297 U. S. 233 (1936) 9, 10, 26
Morehead v. Tipaldo, 298 U. S. 587 (1936) 18
National Labor Relations Board v. The Associated Press, 85 F. (2d) 56 (C. C. A. 2d, 1936) 1, 12
Near v. Minnesota, 283 U. S. 697 (1931) 9, 10, 12, 26
Pacific Railway Commission, In re, 32 Fed. 241 (C. C. N. D. Calif. 1887) 24
Panama Refining Co. v. Ryan, 293 U. S. 388 (1935) 21
Railroad Retirement Board v. Alton Ry. Co., 295 U. S. 330 (1935) 18
Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935) 18, 21

National Labor Relations Board Proceedings.

National Labor Relations Board in the matter of William Randolph Hearst, et al., and American Newspaper Guild, Case C-136 ..... 13, 14
National Labor Relations Board in the matter of The Associated Press, a corporation, and the American Newspaper Guild, Case R-26 15

Constitutional Provisions.

First Amendment 6, 7, 9, 10, 11, 13, 17, 20, 26
Fourth Amendment 6, 23, 24
Fifth Amendment 6, 7, 17, 20, 23, 26
Fourteenth Amendment 10

Statutes.

PAGE

The National Labor Relations Act, 49 Stat. 449; 29 U. S. C. A. § 151 et seq.:
- Text 28-42
- Section 7 ..... 2, 5, 13, 22
- Section 8 ..... 3, 5, 14, 20
- Section 9 ..... 5, 6, 14, 15, 16, 17, 20, 21, 22, 23
- Section 10 ..... 6, 16, 23, 24
- Section 11 ..... 6, 23, 24, 25
- Section 12 6

Miscellaneous.

Editor and Publisher 9, 16, 25
Madison, James, Works, Vol. 4 9
The Guild Reporter 9, 14

IN THE

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OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

BRIEF FOR AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AS AMICUS CURIAE

This brief is filed in the above entitled case by the American Newspaper Publishers Association as amicus curiae.

Statement of the Case

The Associated Press petitioned for a writ of certiorari to review a decision of the Circuit Court of Appeals for the Second Circuit, rendered July 13, 1936, in National Labor Relations Board v. The Associated Press, 85 F. (2d) 56, granting the petition of the National Labor Relations Board for enforcement of an order entered by the Board on May 21, 1936, requiring The Associated Press to:

"1. Cease and desist:

"(a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees, for joining the Guild or any other labor organization of its employees; and

"(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and

"(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"(a) Offer to Morris Watson immediate and full reinstatement, to his former position, without prejudice to any rights and privileges previously enjoyed by him.

"(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

"(c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting." (R. 3.)

The Associated Press is a membership corporation organized and existing under the laws of the State of New York. It is engaged in the purchase, collection, receipt, compilation and formulation of intelligence. Its membership includes the owners of over 1,300 daily newspapers in the United States to whom the Association distributes such news as it collects.

On October 18, 1935, the petitioner discharged Morris Watson, an editorial employee, engaged in obtaining, composing, writing and editing items of news.

On November 7, 1935, the American Newspaper Guild, a labor organization, filed charges with the National Labor Relations Board against The Associated Press, alleging that in discharging Watson the petitioner had engaged in unfair labor practices in contravention of Section 8 of the National Labor Relations Act (R. 10-11). Thereupon, on December 4, 1935, a complaint was served by said Board on the petitioner herein, which alleged that in violation of Sections 8(1) and (3) of the National Labor Relations Act it had discharged and refused to reinstate said Watson (R. 12-15). The Associated Press by answer admitted the discharge of Watson but denied that the discharge was due to the fact that Watson had joined and assisted the Guild or engaged in labor activities (R. 16-21). Hearings on the complaint were held before an Examiner. The petitioner herein moved to dismiss the complaint on constitutional grounds. Its motion was denied and it withdrew. After further hearings, the Examiner recommended reinstatement of Watson and payment of lost wages (R. 416-432). This report was confirmed by the Board and an order entered to that effect (R. 432-433). The Board then petitioned the Circuit Court of Appeals for the Second Circuit for the enforcement of this order (R. 14). After a hearing before that court on June 15, 1936, at which the application of the Act to the petitioner and its constitutionality were fully argued, that court granted the petition of the Board (R. 445).

From this decree The Associated Press applied to the Supreme Court of the United States for a writ of certiorari and its petition was granted by this Court on October 26, 1936. The Associated Press v. National Labor Relations Board, 57 Sup. Ct. 110.

Interest of the Amicus Curiae

The American Newspaper Publishers Association is a membership corporation organized and existing under the laws of the State of New York. Membership in the Association is confined to publishers of daily and/or Sunday newspapers. The particular object of the Association is to foster the business and business interests of its members. It has a membership of more than 425 newspaper publishers whose publications represent in excess of 80% of the total daily and Sunday circulation of newspapers published in the United States. Many of its members are also members of The Associated Press. Some of them are wholly dependent upon The Associated Press for news of national and international affairs. Some, in addition to being members of The Associated Press, obtain the news services of other press associations. Others are not members of The Associated Press. All are vitally interested in the question presented by this controversy insofar as it affects the business of the press of the United States.

Question Presented

The fundamental issue in this case, insofar as it concerns the newspaper publishing business, is whether Congress can create or endow a legislative agency with power to control the various steps and operations essential to the gathering and dissemination of information by the press.

Statutes and Constitutional Provisions Involved

The statute involved is so lengthy that for convenience it is included in Appendix A of this brief.

The statute is the National Labor Relations Act, Pub. No. 198, 74th Congress, 49 Stat. 449, U.S.C.A. Title 29, Section 151 et seq. A brief summary of the more pertinent provisions of the statute follows:

Section 7 of the Act provides that

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8 of the Act defines five unfair labor practices. All five are practices by employers. The five unfair labor practices applying to employers only, as set forth in this section are:

> "(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;
>
> "(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;
>
> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; . . .
>
> "(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;
>
> "(5) To refuse to bargain collectively with the representatives of his employees . . ."

Section 9 of the Act deals with the selection of representatives of the employees and their election as representatives.

Section 9(a) makes a majority of the employees "in a unit appropriate for such purposes" the "exclusive representatives of all the employees in such unit for the purposes of collective bargaining."

Section 9(b) vests the Board with power to determine what is the appropriate unit for purposes of collective

bargaining—whether it shall be the employer unit, the craft unit, the plant unit or subdivision thereof.

Section 9(c) vests the Board with power to investigate any controversy affecting commerce, to hold hearings upon such controversies after due notice, and to take a secret ballot of employees, or utilize any other method it desires to determine who are the representatives of the employees.

Section 10 empowers the Board to issue orders to employers to cease and desist from the unfair practices enumerated in Section 8. This section also contains certain procedural provisions pertaining not only to procedure before the Board but to procedure in the courts.

Section 11 gives the Board unlimited investigatory power, including the right to compel the employer to produce his books, records, and other private papers and effects, including correspondence, upon request of the Board, and without particularization.

Section 12 contains criminal penalties of fine and imprisonment—the fine not to exceed $5,000, and the imprisonment not to exceed one year—for employers who refuse to carry out the orders of the Board.

The constitutional provisions involved are the First, Fourth and the Fifth Amendments to the Constitution of the United States.

The First Amendment is as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment is as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment is as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

ARGUMENT

I.

THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROHIBITS CONGRESS FROM ABRIDGING THE FREEDOM OF THE PRESS OR FETTERING THE ESSENTIAL PROCESSES IN THE PRODUCTION OF A NEWSPAPER. SINCE CONGRESS HAS NO SUCH POWER, IT HAS NONE TO DELEGATE TO ANY LEGISLATIVE AGENCY.

A. The predominant purpose of the grant of immunity in the First Amendment was to preserve an untrammeled press as a vital source of public information.

The function of the daily newspaper press is the gathering and dissemination of information. The information may be in the form of news, editorial comment or advertising. It may be in word or picture form.

The function of a press association is the gathering of information, its formulation into news, and its dissemination to newspapers for publication in their columns. Essentially this service of a press association is one of the functions of the press, for no matter how large or how economically strong any particular newspaper may be, there is not a newspaper in the United States today with sufficient resources to give its readers the worldwide coverage of news now supplied by our press associations.[1]

News is gathered at the four corners of the earth and transmitted by every known agency of communication—by word of mouth, by telephone, telegraph, cable, wireless, post office, and airplane—so that it may be published for the information of newspaper readers.

News is information of general public interest which the newspaper proprietor regards as of sufficient importance to publish in his newspaper. The ultimate responsibility for its publication is solely his. He may delegate this responsibility to his editor—in fact, such is usually the case—but where the editor is responsible to the publisher, the latter in turn is responsible to the public. News is factual. Therefore, those who gather the news are under obligation to their publishers to make it so, and without bias or partisan color. Affiliation of newspaper reporters or editorial

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[1] There are in the United States four great organizations gathering and disseminating information in the form of news. They are, in addition to petitioner herein, the International News Service, the Universal Service, and the United Press. These organizations are unique in that they, unlike the press associations in all other countries, are not and never have been in any way subject to governmental control, censorship or domination of their internal affairs. Nor has any one of them ever been the recipient, directly or indirectly, of any financial aid or support from the government or under any economic obligation to the government. In 1935, petitioner herein spent in excess of $9,360,000 in its service to the press. (R. 30.) A safe estimate of the cost of the service by all four great American press associations would be a figure in excess of $20,000,000 annually.

It is important to bear in mind the nature of the Associated Press. It is a mutual press association, engaged in the business of gathering information for its members, all of whom furnish news to this organization for the benefit of one another. The three other organizations are not mutually, but privately owned. Even so their function is the gathering of information, its formulation into news and its dissemination to newspapers.

writers with an organization which can demand or command adherence to and support of any particular program affecting broad public interest or assistance to one party or another in a controversy cannot be countenanced by a publisher who desires to preserve the integrity of his news columns.[2]

This Court, within recent years, has had occasion to consider the purpose of the grant of immunity against abridgement of the freedom of the press as contained in the First Amendment to the Constitution of the United States.

In *Near v. Minnesota*, 283 U. S. 697 (1931), the Court referred to a statement by Mr. Madison, who said:

> "The great and essential rights of the people are secured against legislative as well as executive ambition. They are secured not by laws paramount to prerogative but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from *previous restraint by the executive, as in Great Britain, but from legislative restraint also.*" Report on the Virginia Resolutions, Madison's Works, Vol. 4, p. 543. (Emphasis supplied.)

The Near case involved an effort by a legislature to provide for the suppression of the press by injunctive process.

In *Grosjean v. American Press, Inc., et al.*, 297 U. S. 233

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[2] It is significant that the American Newspaper Guild, which filed the complaint in this proceeding, at its last annual convention pledged its support to a Farmer-Labor political party. Opposition to this commitment has been expressed by various members of the Guild. (See The Guild Reporter, official organ of the American Newspaper Guild, November 1, 1936, p. 6.)

The Guild also has affiliated itself with the American Federation of Labor. Following the Guild's vote of affiliation, the California State Federation of Labor, at its 1936 convention, voted to bar non-Guild photographers from its meeting and to deny non-Guild reporters seats at the press table at future meetings of the Federation. (See Editor and Publisher, September 26, 1936, p. 14.)

Article III, Section 20, of the Constitution of the Newspaper Guild of New York, obligates each applicant for membership in the Guild to bind himself to the fullest observance of the "letter and spirit of the Constitution of the A.N.G. and of the Guild and to declare his willingness to conform to the rules and regulations now in force or hereinafter adopted." (R. 353.)

(1936), this Court passed upon an effort by a legislature to restrain the press through taxation, and in holding the law repugnant to the constitutional guaranty, through Mr. Justice Sutherland, said:

> "The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. . . .
>
> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

In *De Jonge v. Oregon*, Supreme Court of the United States No. 123, decided January 4, 1937, this Court again dealt with the grant of immunity in the First Amendment and Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

> "Freedom of speech *and of the press* are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. (Citing among other cases Near v. Minnesota, supra; Grosjean v. American Press Co., supra.) . . . The First Amendment of the Federal Constitution expressly guarantees that right against abridgement by Congress . . . For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions—principles which the Fourteenth Amendment embodies in the general terms of its due process clause . . .
>
> "These rights may be abused by using speech or press or assembly in order to incite to violence and

crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, *free press,* and free assembly *in order to maintain the opportunity for free political discussion,* to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." (Emphasis supplied.)

B. The National Labor Relations Act, as applied to the instant case, destroys the principle of a free press as guaranteed by the First Amendment.

Morris Watson was a reporter employed by The Associated Press, petitioner in the instant case. His work consisted of gathering, writing and editing news. This work was but a stage in the preparation of news for publication. Before it reached the reading public in A. P. newspapers, it had to be approved by Watson's superiors, corrected if they thought advisable, and then transmitted over "leased" wires to member papers. There it might be printed in full, condensed, or rejected in toto. But before being printed, it had to be approved by the editor. In addition, appropriate heads had to be written. Then and not until then could the final steps towards publication be taken. These include the setting of the news in type, its assignment to a particular page in the newspaper using it, its inclusion in the form for that page, the casting of that form in the stereotyping room for use on the presses, the placing of the cast on the presses, the assembling of all other pages going into that newspaper and their preparation for press runs; and when this had been done, the actual operation of the presses themselves.

Watson joined the American Newspaper Guild and became active in its affairs in 1933.

On October 18, 1935, he was discharged. Thereupon, the Guild filed a complaint with the National Labor Relations Board alleging his discharge was due to his Guild activities and charging a violation of the Act by petitioner. The Board held a hearing, after which it found that he was discharged because of his Guild activities and it ordered The Associated Press to reinstate him. (R. 3.) The Associated Press refused. Whereupon, the Board petitioned the Circuit Court of Appeals for the Second Circuit for the enforcement of its order. After hearing and argument, that Court granted the petition of the Board. National Labor Relations Board v. The Associated Press, *supra*.

Even if the Board correctly found that Watson was discharged because of his Guild activities, it is the belief of this amicus curiae that the Board is without constitutional power to order his reinstatement and compel compliance with that order. Rather, it believes that when, in the judgment of a publisher, a newswriter or editor, by reason of external affiliations, influences or activities becomes unsuited for his employment, no agency of the government either has the power or can be endowed with the power by Congress to interfere with the exercise of that judgment, whatever the nature of the employee's affiliations or activities may be.

A newspaper publisher is responsible, under the Constitution and laws of this country, for the contents of his publication and for the policies as expressed in his publication. He cannot be restrained in the conduct of his publication, even though he is subject to subsequent punishment for abuse of his responsibility or violation of law. *Near* v. *Minnesota, supra*. A publisher cannot divest himself of this responsibility even though by his own action he may limit the exercise of his judgment and surrender control of his policies to persons or organizations who are not responsible to the general public.

By the precise terms of the First Amendment, as interpreted by this Court, Congress is without power to interfere with him in the exercise of his judgment or the meeting of his responsibility.

If such power does exist, then the responsibility for the gathering and dissemination of information has been transferred from the press to the government and the press has become a creature of the government.

If such power exists, then the press is no longer untrammeled, no longer a vital source of public information.

The Act here in controversy purports to clothe the National Labor Relations Board with such power.

Under the sweeping provisions of Section 7, employees are given the right of self-organization to bargain collectively through representatives of their own choosing and to engage in concerted activities, not only for the purpose of collective bargaining but for other and undefined purposes as well. There is no limitation upon the activities.[3]

They may organize to destroy their employer[4]; to tear down the government; to support the government; to aid a

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[3] In 1936, the Post-Intelligencer, the oldest daily newspaper in the City of Seattle, Washington, was forced to close down for a period of months because of such activities. Two members of the Guild were discharged. At the time of their discharge, the Guild had a membership of less than 30 out of a total of approximately 80 editorial workers employed by the Post-Intelligencer. The Guild filed charges with the National Labor Relations Board. Then it ordered a strike before the Board could hear its complaint. Aligning itself with other labor groups whose members were not employed by the newspaper, the Guild picketed the Post-Intelligencer plant. Members of the printing trades unions employed by the newspaper refused to cooperate with the Guild in these strike activities. To avoid further bloodshed after riotous activities, the publisher suspended publication. While the paper was suspended, the National Labor Relations Board proceeded to hear the Guild's complaint. During the course of the hearing, the member of the Board who was designated to conduct it ruled that the Board was not concerned in any of the Guild's activities, but solely in the one question as to whether the two Guild members had been discharged because of their Guild activities. (See *National Labor Relations Board in the matter of William Randolph Hearst, et al., and American Newspaper Guild*, Case C-136.)

[4] The record in the Post-Intelligencer case shows that long before any employee of that newspaper joined the Guild, the American Newspaper Guild was engaged in a nationwide boycott against all of the enterprises of the Post-Intelligencer's owner. (P. 152 Record in *National Labor Relations Board in the matter of William Randolph Hearst, et al., and American Newspaper Guild*, Case C-136); that the member of the Board

political party or to oppose it; to indulge in national or international controversy; to control the sources and flow of information; to influence public opinion.

And if the employer objects to, or if he discharges employees engaged in, such activities, under Section 8 of the Act he is guilty of "unfair labor practices". If he refuses to bargain with a group of his employees so engaged, he is equally guilty.

Section 9 of the Act sweeps away at one stroke the whole American principle of a press free from governmental dictate.

Under Section 9(a), all rights of an individual employee to bargain for himself are destroyed. If a bare majority of his fellow workers select representatives, he is bound by their program. True, he can submit a grievance to his employer, but the latter is powerless to act if his action interferes in any manner with the dictates of the majority group.

Section 9(b) vests the National Labor Relations Board with the power to determine what is the appropriate unit for purposes of collective bargaining, whether it shall be the employer unit, the craft unit, the plant unit or subdivision thereof. None of these units is defined with particularity.

There is no limit to the Board's discretion under this section. No standard is fixed for its guidance.

It is entirely within the discretion of the Board to order an election to determine who shall, for purposes of collective bargaining, represent the employees of

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presiding at the hearing stated the Act did not go to unfair acts of the employees. (P. 155 Record in *National Labor Relations Board in the matter of William Randolph Hearst, et al., and American Newspaper Guild*, Case C-136). The Guild Reporter, official organ of the American Newspaper Guild, on May 15, 1936, at page 3, contained a two column box urging Guild members and Guild friends to (a) withhold their patronage from "as many Hearst enterprises as possible"; (b) conduct "your own private campaign on some of his advertisers", and (c) write to advertisers telling "what you are doing". Twenty-six newspapers, eleven magazines, and twelve radio and motion picture enterprises were listed specifically to be boycotted. At that time there was a dispute pending on one newspaper only out of all of these listed companies and the single issue was over signing a Guild contract.

(a) a particular department of a single newspaper;

(b) that particular department of two or more newspapers in a given city or that department of all newspapers in any city or area or even in the country as a whole;

(c) a single newspaper as a unit of employment, without reference to the character or the nature of the work done by any group of employees; or of all newspapers in any city, or area, or of all newspapers in the United States.[5]

Once the Board certifies the representatives, after such a determination as it may have made pursuant to the provisions of Section 9(c), the law requires the employer to deal with those representatives and only with them insofar as all conditions of employment in his newspaper or press association are concerned. Those representatives may insist that the employer employ only members of their organization; that the employer shall compel all of his employees who do not at the time of their negotiations belong to that particular organization to take out membership therein under penalty of discharge if they decline; that the employer agree to confine his selection of future employees to members of the organization and to make his selection from lists furnished by the organization; and further, that

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[5] While Section 9(a) makes a majority of the employees in a unit "appropriate for such purposes" the "exclusive representatives of all the employees in such unit for the purposes of collective bargaining", the National Labor Relations Board, where it orders an election, interprets and enforces this section to mean not a majority of the employees but a majority of those employees who vote in such an election.

In another controversy between the petitioner herein and the American Newspaper Guild, the Guild petitioned the Board to hold an election to determine the representatives of petitioner's employees for purposes of collective bargaining. The Guild, in its petition, stated that it represented a majority of the petitioner's employees. An election was ordered. Many of petitioner's employees purposely or otherwise refrained from voting. The Guild polled a majority of those who did vote, but this did not constitute a "majority of the employees." However, the Board certified the Guild as the representative of all of the employees and ordered the petitioner to enter into collective bargaining with it. (See *National Labor Relations Board in the matter of The Associated Press, a corporation, and the American Newspaper Guild*, Case R-36.)

One of the avowed purposes of the American Newspaper Guild, as stated in its constitution, is to promote "industrial unionism" in the newspaper business. (R. 884.)

the employer refuse to employ anyone who has been expelled or rejected from membership in that organization.[6]

These possibilities are not fantastic. They are included in the program of the American Newspaper Guild which filed the complaint against the petitioner in this case precipitating this controversy before the National Labor Relations Board.

Section 9(d) provides for the carrying out of the Board's orders. While this section contains a provision for judicial review, nevertheless, this provision is limited by Section 10(e), which makes the findings of the Board as to the facts, if supported by evidence, conclusive. Judicial review is further limited by Section 10(b), which in precise language provides that in proceedings before the Board "the rules of evidence prevailing in courts of law or equity shall not be controlling."

From the foregoing, it can thus clearly be seen that the provisions of this Act purport to strip the press of all con-

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[6] Jacob Mogelever, city editor of the Newark, New Jersey, Ledger, was expelled from the Guild in December, 1936, on the ground that his "interests lay more with the employer than with the employees." On January 13, 1937, Vice Chancellor Bigelow issued a temporary restraining order restraining the Newark Newspaper Guild from removing Mogelever's name from its rolls and from certifying his expulsion to the American Newspaper Guild. In his petition to the Court, Mogelever declared his loss of membership might deprive him of the right to make a living as a newspaper man. As a member of the Guild, Mogelever opposed the declaration of a strike against the Ledger some months ago, but when the strike was voted he served on the picket line for 19 weeks and was, for a time, chairman of the welfare committee of the strikers. He insists there is no room now in the Guild for anyone opposing the policies of the majority therein. (See *Editor and Publisher*, January 16, 1937, p. 8.)

A standard form of contract submitted to newspapers by the American Newspaper Guild contains the following provisions:

> "All conditions and benefits contained in this contract extend over all editorial employees of the publisher."
>
> "The publisher agrees, however, to employ in his editorial department only members in good standing of the Guild."
>
> "In case the publisher wishes to hire employees in the editorial department, he shall request the Guild to furnish lists of its members available for such employment. Such lists shall be furnished within 48 hours. If the Guild fails to furnish such lists or if such lists do not contain the names of persons acceptable to the publisher, the publisher may hire anyone whether a Guild member or otherwise. Employees so hired shall, within 30 days from the date of employment, become members of the Guild or be dismissed by employer."

trol over conditions of employment in the conduct of its business of gathering and disseminating information. In the final analysis, that control is vested in a governmental agency. Such a governmental control is repugnant to the First Amendment to the Constitution of the United States.

II.

THE NATIONAL LABOR RELATIONS ACT IS REPUGNANT TO THE FIFTH AMENDMENT TO THE CONSTITUTION.

A. The law here in controversy abolishes the right of an individual to contract for his own services.

One of the most cherished rights of an American citizen is that right guaranteed by the Fifth Amendment to the Constitution to make contracts for his own services. As this Court said in *Coppage* v. *Kansas*, 236 U. S. 1 (1915):

> "If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist; to the poor as to the rich; . . ."

Under Section 9(a) of the Act, if a bare majority of one's fellow workers in any unit selected by the National Labor Relations Board as an appropriate unit for purposes of collective bargaining lays down a program, that person is compelled not only to subscribe thereto but to submit thereto as long as he is in the minority. His only alternative is to give up his employment.

The effect of this section on a newspaper worker can readily be seen if one pauses for a moment to consider that the fundamental essential of reportorial and editorial work is quality. The prestige and success of a newspaper and its service and value to the public depend not on how much

copy is produced, but on how good, how true, how independent, how uninfluenced by external influences or affiliations that copy is.

And the value of a newspaperman's services depends not on any standard arbitrarily set up on a quantitative basis, but on the higher standard of individual quality. To deprive him of the right to sell his services to his own best advantage, to compel him to sell them at a figure fixed by a majority of his fellow employees, is to deprive him of his right to make contracts about his own affairs as now guaranteed by the due process clause.[7]

Morehead v. *Tipaldo*, 298 U. S. 587 (1936).

Carter v. *Carter Coal Company*, 298 U. S. 238 (1936).

Schechter Poultry Corp. v. *United States*, 295 U. S. 495 (1935).

Railroad Retirement Board v. *Alton Ry. Co.*, 295 U. S. 330 (1935).

Adair v. *United States*, 208 U. S. 161 (1908).

B. The Act deprives the employer of the right to make contracts about his affairs.

Just as the Act deprives the employee from making contracts for his services to his own best advantage, so does it deprive the employer of the right to contract for services to his own best advantage.

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[7] This amicus curiae was probably the first great national organization of employers to enter into arbitration contracts with the American Federation of Labor covering mechanical employees. This it did more than 35 years ago. However, a distinction must be drawn between the work of mechanical employees and that performed by editorial employees. Mechanical employees follow a pattern. The value of their output is on a tangible, measurable basis of quantity. Quality is in general uniform. Compensation can be based on the elements of time and quantity. The agreements entered into between publishers and groups of their mechanical employees have been voluntary, not subject to government compulsion. A few publishers have entered into agreements with their editorial employees. This action also was voluntary and entirely within the proper exercise of their judgment by such publishers.

The issue here presented goes far beyond such voluntary action. It is whether Congress has power to compel those who are engaged in the business of the press to become subject to the dictates of a legislative agency in such a manner as to restrict the free exercise of judgment by all publishers and thereby fetter the press.

The value and effectiveness of newspaper copy, and hence the value and effectiveness of the services of reporters and editors who write it, depend upon such qualities as personality, ambition, imagination, creative ability, independence of mind and diverse and special intellectual talent. These qualities are exclusively individualistic, not subject to classification, regimentation or standardization.

These individual talents, though not always clearly definable, are nevertheless discernible to the publisher or editor, who must have reporters and editorial writers who as a group constitute a staff of balanced excellence and talents and who as individuals are creative, independent and both able and free to see, narrate and criticize and who, above all, are chosen on merit and without regard to external affiliations or influences.

For any external organization or tribunal, regardless of origin, method or intention, to participate in control of news or editorial staffs through the processes of selection, determining tenure or requiring restoration to employment of staff members, or by any other means which ingenuity may contrive, is directly to exercise an influence in the determination of what shall be written, what shall be printed, who shall write it and how it shall be written, and edited. For a publisher or editor to permit such participation, in whatever form of direction or indirection it may be advanced, is a deprivation or surrender of that which is at once the duty, the responsibility and the right of that publisher or editor, namely, to determine the character of the newspaper.

Such a surrender or deprivation is impossible for any newspaper that stands for intellectual freedom for its news and editorial staffs and for an independent press.

A publisher cannot meet his responsibility if by government fiat he is compelled to accede to the demands of any group of employees that employment in his editorial and news departments shall be restricted to any list of membership chosen by such an organization or group or that com-

pensation for work done in these departments shall be based upon any rule of uniformity, irrespective of quality, whatever the yardstick may be.

A statute, such as the one here in controversy, deprives the publisher of the right to determine the character of his newspaper in a manner repugnant to the First Amendment. Also, it deprives him of his right to make contracts about his affairs in a manner repugnant to the Fifth Amendment.

C. The statute contains no mutuality.

Nowhere in the statute is an employer given any rights whatsoever, except the right to resist the Board when the latter seeks an order of the Court to enforce its dictates or to petition for a judicial review of a Board order. By the limitations of the statute, this right of judicial review virtually is limited to questions of law, as findings of fact by the Board are conclusive. Preponderance of the evidence to justify a finding is not required. And rules of evidence specifically are waived.

The only unfair labor practices are those set forth in Section 8. They are solely practices of employers.

Under the theory of the law, a majority of an employer's employees can do no wrong, once the Board has certified them as the representatives of all employees.

While the representatives of such a majority may complain against the employer, he may not complain against them.

While the Board is vested with power to enter an order against an employer, it is without power to enter one against his employees.

And all rights of an individual employee who does not subscribe to the program of a majority of his fellow employees are ignored. True, the individual may submit grievances to his employer but the latter is powerless to do anything about them if they are against the wishes of the majority. (Sec. 9(a).)

III.

THE NATIONAL LABOR RELATIONS ACT CONSTITUTES A DELEGATION OF POWER REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

Section 9(b) fails to supply a legislative standard to guide the Board in determining what is "the unit appropriate for the purposes of collective bargaining" and in this particular constitutes an unauthorized delegation of legislative power. As hereinbefore pointed out, there is no standard for the Board's guidance, no limit to the exercise of its discretion.

In *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935), this Court held unconstitutional Section 9(c) of the Recovery Act, which purported to authorize the President to prohibit the transportation in interstate commerce of petroleum produced or withdrawn from storage in excess of the amount permitted by state law. After reviewing cases in which an adequate legislative standard had been provided, the Court said, at p. 430:

> "Thus, in every case in which the question has been raised the Court has recognized that there are limits of delegation which there is no constitutional authority to transcend. We think that Section 9(c) goes beyond those limits. As to the transportation of oil production in excess of state permission, the Congress has declared no policy, has established no standard, has laid down no rule. There is no requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited."

The sweeping delegation of legislative power in Section 9 (b) of the National Labor Relations Act is without precedent, just as this Court, in Schechter Poultry Corp. v. United States, *supra*, held that Section 3 of the Recovery Act, authorizing the President to establish Codes of Fair Competition, was without precedent, for the following reasons:

"It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, §3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in §1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered . . ."

Similarly the provision in Section 9 (b) authorizing the Board to determine "the unit appropriate for the purposes of collective bargaining" is a clearly insufficient standard which finds no support in previous decisions of this Court.

Section 7 of the Act places no restrictions on the purposes of the labor organizations which are given certain rights and benefits under other sections of the law.

Section 9(a) makes a majority of the employees "in a unit appropriate for such purposes" the "exclusive representatives of all the employees in such unit for the purposes of collective bargaining."

This has the same vice as that found in Part 3, Section 4 (g) of the Bituminous Coal Conservation Act of 1935, which delegated the power to fix maximum hours of labor and minimum wages to a part of the coal producers and miners. In declaring this delegation unconstitutional, this Court, in *Carter v. Carter Coal Company, supra*, made the following statement which is pertinent to Section 9 (a) of the Act here in issue:

"The effect, in respect of wages and hours, is to subject the dissentient minority, either producers or miners, or both, to the will of the stated majority, since, by refusing to submit, the minority at once incurs the hazard of enforcement of the drastic compulsory pro-

visions of the Act to which we have referred. To 'accept', in these circumstances, is not to exercise a choice but to surrender to force.

"The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. *This is legislative delegation in its most obnoxious form;* for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of the others in the same business. . .

"And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this Court which foreclose the question." (Emphasis supplied.)

IV.

THE INVESTIGATORY POWERS VESTED IN THE BOARD ARE REPUGNANT TO THE FOURTH AMENDMENT TO THE CONSTITUTION.

Section 11 of the Act gives to the Board unlimited power to compel not only the production of books, records, correspondence, documents or other evidence "which, *in the opinion of the Board* are necessary and proper for the exercise of the powers vested in it" by Sections 9 and 10, but also the power to compel access for the purpose of examination and the right to copy any evidence "of any person being investigated or proceeded against that relates to any matter under investigation or in question." (Emphasis supplied.)

The only persons who can be investigated under the Act are employers. The effect of this provision is to subject an employer's affairs to impertinent scrutiny by a government agency at the request of those who claim to represent his employees and to make a public record of all of his affairs

in such a way as to subject him in turn to irreparable injury.

If there is any one principle imbedded in our jurisprudence it is that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated". That right is sacred.

The Fourth Amendment was inserted in the Constitution to protect the citizen from just such provisions as those of Section 11. It grew out of public resentment against the notorious writs of attachment and writs of assistance of colonial days; out of the struggle against arbitrary power in which our forefathers had been engaged for more than twenty years before the declaration of American independence.

Substantially similar enactments have often been condemned by this Court.

Boyd v. *United States*, 116 U. S. 616 (1886).
Federal Trade Commission v. *American Tobacco Company*, 264 U. S. 298 (1924).

See, also, *In re Pacific Railway Commission*, 32 Fed. 241 (C. C. N. D. Calif. 1887) (frequently referred to with approval).

Section 11, offensive as it is standing alone, becomes more repugnant when read in connection with that provision of Section 10(c) which relieves the Board of any requirement to adhere to the rules of evidence prevailing in courts of law or equity in its various proceedings.

The controversy now before this Court relates to an order of the Board calling upon The Associated Press to reinstate a newswriter who was discharged by the petitioner herein. Under the broad provisions of Section 11, it would be quite possible for the Board to demand access to the records, correspondence, interoffice memoranda, and other matters relating to the editorial policy of a newspaper. It must not

be forgotten that the organization which filed this complaint is seeking to embrace within its membership all persons employed in the editorial departments of newspapers, from office boy to editor-in-chief. It is not unreasonable to assume—if this Act be upheld and a controversy should arise between a labor organization which claims to represent a majority of the editorial employees of a newspaper and the publisher of that newspaper—that such an organization would request of the Board a sweeping inquiry into editorial policy and that the Board in turn would demand of the publisher all books, records, papers, correspondence and other material evidence relating to such policy.

The reasons why an editor determines upon a specific policy are not reasons for governmental inquiry and no power exists to compel the disclosure of those reasons.

Some organization claiming to represent the employees of a newspaper engaged in its advertising department might bring a case before the Board, and under the provisions of Section 11, the Board might attempt to require the publisher to give evidence as to why he accepted or rejected certain advertisements.

It is a well-known fact that many publishers have established rules with which all advertising copy must comply in order to maintain their newspapers upon a high standard of decency and integrity.[8]

Just as the publisher of a newspaper has the right to lay down his editorial policy, just as he has the right to accept or reject news according to his own judgment of its importance, so does he have the right to accept or reject advertising copy according to the standards of his publication as those standards are fixed by him.

None of these is a matter for government inquiry unless some violation of law occurs. As this Court has said, subsequent punishment, not previous censorship or regulation, is the rule to be followed.

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[8] See address of Arthur Hays Sulzberger, President and Publisher of the New York Times, before the Columbia Alumni Association, *Editor and Publisher*, January 9, 1937, pp. 3-4.

CONCLUSION

As has been stated heretofore, the fundamental question presented by this case, insofar as it affects the newspaper publishing business, is whether Congress can create or endow a legislative agency with power to control the various steps and operations essential to the gathering and the dissemination of information by the press; whether Congress can substitute its judgment or that of one of its agencies for the judgment of those who under our Constitution are responsible for the conduct of the business of the press.

As Mr. Madison said, in his Report on the Virginia Resolutions, the

> ". . . security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also."

This principle has been upheld in the Near case, the Grosjean case, and the De Jonge case by this Court.

It is respectfully submitted that under the provisions of the First and the Fifth Amendments, Congress has no power either to compel or to forbid collective bargaining; that it has no power to substitute its judgment or that of one of its agencies for the judgment of those who conduct the business of the press.

If a newspaper publisher desires to enter into contracts with his employees by the terms of which he restricts his right of selection to members of any particular organization, Congress is without power to interfere with him in his determination so to do.

Likewise Congress is without power to compel a newspaper publisher to enter into such an agreement.

Neither has Congress the power to say to a citizen of this country who desires to engage in newspaper work that as a condition precedent to such employment he must obtain membership in a labor organization approved by one of its agencies.

The sole question involved in this controversy is one of the power of Congress to authorize the National Labor Relations Board to do the thing which it has done—to require petitioner herein to retain in its employ a man whom it regards as no longer suited for such employment.

It is submitted no such power exists.

Respectfully submitted,

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, AMICUS CURIAE.

By ELISHA HANSON,
Counsel for Amicus Curiae.

APPENDIX A

THE NATIONAL LABOR RELATIONS ACT

[PUBLIC—No. 198—74TH CONGRESS]

[49 Stat. 449; 29 U. S. C. A. §151 et seq.]

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends

to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or any-

one acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

[1] So in original.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent

or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a

group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any

[1] So in original.

other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing for the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all

the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evi-

dence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28 secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board

under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under

investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided,* That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 365.

THE ASSOCIATED PRESS,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF THE AMERICAN NEWSPAPER GUILD AS *AMICUS CURIAE*.

MORRIS L. ERNST,
Solicitor for the American Newspaper Guild, as *Amicus Curiae*.

CALLMAN GOTTESMAN
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Of Counsel.

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INDEX.

	PAGE
PRELIMINARY STATEMENT	1
THE FACTS	3
THE QUESTIONS	4
ARGUMENT	
POINT I—The National Labor Relations Act is a necessary and proper regulation of commerce among the several states	5
POINT II—The National Labor Relations Act does not deprive any person of life, liberty or property without due process of law	19
POINT III—The National Labor Relations Act as applied to petitioner does not abridge the freedom of the press	24
CONCLUSION	27

Table of Cases Cited.

	PAGE
Assoc. Press *v.* Herrick, 13 F. Supp. 897	3
Assoc. Press *v.* International News, 248 U. S. 215	24
Carter *v.* Carter Coal Co., 298 U. S. 238	3
Davidson *v.* Board of Admin'rs of New Orleans, 96 U. S. 97	21
Den *v.* Hoboken Land & Improvement Co., 18 How. 277	20
McCullough *v.* Maryland, 4 Wheat. 316	22
Muller *v.* Oregon, 208 U. S. 412	3
Near *v.* Minnesota, 283 U. S. 697	24
Old Dearborn Distrib. Co. *v.* Seagram-Distillers Corp., 81 L. Ed. 130	22
Patterson *v.* Colorado, 205 U. S. 454	24
Purity Extract & T. Co. *v.* Lynch, 226 U. S. 192	19
Schechter Poultry Corp. *v.* United States, 295 U. S. 495	3
Sweet *v.* Rechel, 159 U. S. 380	22
Texas and New Orleans Railroad Co. *v.* Brotherhood of Railway Clerks, 281 U. S. 548	22, 24
Wilson *v.* New, 243 U. S. 332	16

Statutes.

Act of 1898, 30 Stat. 476	13
Act of March 4, 1913, 37 Stat. 738	16
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National Labor Relations Act, 49 Stat. 449	2, 3, 18, 19, 20, 21, 22, 23, 24, 25, 26
Railway Labor Act of 1926, 44 Stat. 577, as amended by 48 Stat. 1185	17
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PAGE

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PAGE

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Preliminary Statement.

The American Newspaper Guild, a member of The American Federation of Labor, is an organization composed of editorial employees of news publications, press associations and news photo agencies in the United States. It is specifically concerned with protecting its members with respect to hours of labor, wages and working conditions. It desires to negotiate and bargain with employers without fear of reprisals.

That fear of reprisals is not unfounded, was demonstrated by the discharge for organizational activities of Morris Watson, a Guild Vice-president. Watson was with The Associated Press for seven years and had received many commendations for the excellent quality of his work. Indeed, few newspaper men and women can point to a record as complimentary as that set forth concerning Watson in the instant case (R. 183-188, 192-193, 213-216, 247-249).

Upon a resolution by Watson, one of the leaders in the attempt of the newspaper men and women of the country to improve their economic well-being, petitioner's employees had requested an opportunity to talk with their employer about their jobs, particularly their hours of work (R. 230-231). This mildest of human requests, the employer refused (R. 232). The sponsor of the resolution was at once discharged (R. 233).

The Guild, invoking the peaceful machinery of the National Labor Relations Act, filed with the National Labor Relations Board the charges upon which this proceeding is based (R. 234). Although it is technically not a party to the present proceeding, the Guild is unquestionably a real party in interest.

On one side of this controversy is "the greatest clearing house for news in the world," a "union of persons representing more than 1,300 morning, evening and Sunday newspapers" (Bd. Exh. 4, R. 300). On the other side, are the New York editorial workers of this clearing house for news, symbolized by their leader, Morris Watson. The Government, through the National Labor Relations Board, is an administrative agency created to see that contests of this kind are conducted according to the most elementary rules of fair play.

The organized newspaper men and women of the nation are deeply concerned in the result of the proceeding and accordingly file this brief as *amicus curiae* in support of the constitutionality of the National Labor Relations Act.

The Facts.

The uncontroverted testimony at the hearing clearly developed that petitioner, engaged in shipping news over the railroad tracks of the air, is carrying on "commerce among the several states"; that the work of Watson and his fellow editorial workers is carried on in the "current" of such commerce[1]; and that Watson was discriminated against and then discharged solely because of his Guild activities.

A summary of these facts, a detailed analysis of the provisions of the Act and a comprehensive consideration of supporting legal precedents are contained in the Board's brief. We shall not cover the same ground. We shall address ourselves, in the main, to certain impelling aspects of our economic life, as invited by Mr. Justice Brewer:

> "It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expressions of opinion from other than judicial sources • • •. We take judicial cognizance of all matters of general knowledge." *Muller* v. *Oregon*, 208 U. S. 412, 419, 421.

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[1] No ingenuity is needed to distinguish the flow of news from still unmined coal (*Carter* v. *Carter Coal Co.*, 298 U. S. 238) or chickens slaughtered and ready for sale in local trade (*Schecter Poultry Corp., et al.* v. *U. S.*, 295 U. S. 495). Earlier in these proceedings petitioner urged that the flow of news would be seriously impeded if even a few of its editorial employees were subpoenaed (Bill of Complaint in *Associated Press* v. *Herrick*, 13 F. Supp. 897).

The Questions.

1. Do the words of the Constitution permit Congress to safeguard the free flow of interstate commerce by protecting the rights of employees (including those of petitioner) to organize and bargain collectively, free from the coercive influences of their employer, or do the words of the Constitution compel Congress to stand by powerless to prevent the waste, suffering and blood-shed which, experience has shown, will inevitably follow if the workers of the land may not have a forum to guarantee against unlawful interference with those rights?

2. Do the means selected by Congress to lessen industrial warfare obstructing interstate commerce have a real and substantial relation to the end sought to be attained? Can such means be held to be arbitrary, capricious or unreasonable?

3. Does Congressional action in the premises, as applied to petitioner, violate the guarantee of freedom of the press?

POINT I.

The National Labor Relations Act is a necessary and proper regulation of commerce among the several states.

A Necessary Regulation.

"There will soon come an armed contest between Capital and Labor. They will oppose each other not with words and arguments and ballots, but with shot and shell, gunpowder and cannon."(1)

The United States is in the throes of a second Civil War. Armed strife continues to rock the nation, leaving in its wake lives lost and property devastated. The conclusion that means must be found to resolve the increasing conflicts between employers and employees leaps from the contents of statistical tables.

Strikes have been on the upgrade:

Year	No. of Disputes	No. of Workers Involved	No. of Man Days Lost	Aver. No. of Workers Per Disputes
1931	894	279,299	6,386,183	312
1932	808	242,826	6,462,973	301
1933	1,562	812,137	14,818,846	513
1934	1,856	1,466,695	19,591,949	797(2)

With alarming frequency, the civil authorities have found themselves unable to cope with the rising tide of hostilities. Again and again, armed troops have clashed

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(1) Statement of General Sherman, *quondam* Chief of Staff of the United States Army, made May 1, 1886, reported by Stuart Chase, *Violence in Labor Conflicts* in *American Labor Dynamics in the Light of Post War Developments*, edited by J. B. S. Hardman, (1928) p. 358.

(2) *Labor Fact Book*, prepared by Labor Research Ass'n. (1936) p. 72.

with civilians. During 1933, troops were called out seventeen times in disputes involving thirteen states; by 1934, the figures had expanded dangerously—twenty-four times in nineteen states. And in the year ending June 30, 1935, over 22,000 guardsmen were used on strike duty while only 7,223 were employed for all other purposes.[1] Industries widely disparate in all other respects have suffered similarly.[2]

The struggles have ugly accompaniments. In Georgia during the great textile strike of 1934, National Guardsmen arrested approximately 200 pickets and interned them in concentration camps.[3] Kidnappings of union organizers, tarring and feathering of leaders, forcible deportation from state after state consistently recur.[4] Casualties attend the battles. In the Colorado coal strike (1913-1914) at least 74 persons were killed, including 13 women and children, when militiamen and company guards shot into a strikers' tent colony and set it on fire. Eight years later, wholesale death again resulted from a labor dispute; in the Herrin massacre, 21 unarmed strike breakers were clubbed to death in a riot of strike sympathizers.[5] And the number of

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[1] *Labor Fact Book* at p. 176.

[2] In 1933, troops were called out in strikes of coal miners, farmers, packing company employees, manufacturing workers, milk farmers, textile workers, granite workers and orchard laborers. In 1934, the strikes of miners, maritime workers, textile workers, stove foundry employees, teamsters, shoe workers, electrical company employees and manufacturing laborers necessitated resort to the military. *Id.*, 176-178.

[3] N. Y. Times, Sept. 17-23, 1934; see also Note, *The Use of Military Force in Domestic Disturbances* (1936) 45 Yale L. J. 879.

[4] Witte, *The Government in Labor Disputes* (1932) p. 201. See also *Labor Fact Book*, p. 168, for a general discussion of "Terror in 1935".

[5] Witte, *op. cit. supra*, p. 178.

injuries falling short of death is incalculable. During September, 1920 in Brooklyn alone over 900 people were wounded in the course of almost daily affrays between strikers and nonstrikers.[1]

The costs of waging war are notoriously high. During the ten years from 1916 to 1925, strike losses reached a total of $12,982,048,000 of which $46,000,000 fell on employers, $1,804,000,000 on employees and $10,682,000,000 on the general public.[2] If these figures are compared with the figures showing the cost of projects indispensable to the public welfare, the full extent of the waste becomes appallingly clear. The twelve billion dollars would have been more than enough to pay the salaries of all the teachers in all the public schools of the nation, for the same ten year period; it would have been adequate to pay the entire farm mortgage debt of the United States three times over; no more would have been needed to irrigate all our agricultural lands for more than twelve years.[3] The money estimated to have been spent by one union for one strike—over 14 million dollars[4]—could have paid for one-quarter of the expenditures of all the public libraries in the United States in 1934.[5] These amounts in dollars and cents represent only the direct and immediate losses resulting from labor struggles. The indirect toll in lives, bitterness and

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[1] Olds, *The High Cost of Strikes* (1921) p. 86.

[2] Figures computed by the National Assn. of Manufacturers, and cited by Witte, *op. cit. supra*, at p. 1.

[3] Figures for public expenditures compiled from *The World Almanac* of 1937.

[4] Carver, *The Present Economic Revolution in the United States* (1926) p. 168.

[5] See *supra*, note (3).

decreased efficiency ascribable to increased tension cannot even be reckoned.

> *"The whole delicate structure of modern industry is increasingly intertwined with governmental functions, and will continue to be so in the future, not as a result of any theory whatever, but as the inevitable consequence of the closer integration of social and political life."*[1]

The federal government is vitally concerned with both the recurring skirmishes of industrial warfare and with the waste that they entail. Whatever their cause, their effect is nationwide. The whole integration of modern life is such that an area of local disturbance tends to expand into a general emergency. The discharge of a single individual by the name of Morris Watson may result in a major industrial conflagration. Discontent of textile workers with the conditions under which they labor is not confined to one factory. The textile strike of September 3-22, 1934 spread to 22 states and involved 475,000 employees.[2] For five days, a strike of 400,000 bituminous coal miners has held the entire country in its vise-like grip.[3] Apparently isolated industrial disturbances, such as the strike of longshoremen on the Pacific Coast in 1934, result in a general strike, paralyzing industry and commerce.[4] Although the particular dispute which gives rise to a battle between employer and employee may be totally unrelated to interstate

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[1] Merriam, *Government and Society* in *Recent Social Trends*, Vol. II, p. 1540.

[2] *Labor Fact Book*, p. 81.

[3] *Id.* at pp. 82-83.

[4] *Id.*, pp. 78-80.

commerce, the germ of unrest that it propagates takes no heed of state lines and the contagion is national in scope. The output of goods which would otherwise flow through the channels of interstate commerce is inordinately diminished—interstate movement itself is crippled. It is not the nature of the enterprise, but the nature of the disturbance that is crucial.

That this is so is forcefully demonstrated by the fact that federal troops have been employed in labor disputes entirely irrespective of the source of the dispute. The impotence of the separate states to handle the anarchy arising from labor controversies bears no relation to the question of whether the controversy traces its origins to an interstate or an intrastate enterprise. It is true that the Fort Sumter of the present conflict, the Pullman strike of 1877, involved a railroad,[1] but subsequent encounters in which it was found necessary to resort to federal troops, did not *initially* involve instrumentalities of interstate commerce. Repeatedly, federal troops have moved across state lines to intervene in the crescent struggle between employer and employee. Only a few of the many occasions need be adverted to; the point needs no laboring:

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[1] Witte, *The Government in Labor Disputes* (1932) p. 201.

Date[1]	Dispute	States Affected
1899	Coeur d'Alene strikes in lead and silver mines	Idaho
1903	Colorado mine difficulties	Colorado
1913-1914	Colorado mine difficulties	Colorado
1919	Steel strike	Indiana
1919	Bituminous Coal Strike	West Virginia, Pennsylvania, Tennessee, Wyoming, Utah, New Mexico, Oklahoma, Kansas, and Washington
1919	Seattle General Strike	Washington
1919-1920	Copper Miners' Strike	Montana
1920	Street Car Workers' Strike	Colorado
1921	West Virginia Mine Disturbances	West Virginia[2]

> *"From the foundations of the commonwealth, • • • it follows most obviously that its purpose is not dominion, nor the coercion of men by fear; • • • on the contrary it is that every one may be free from fear, that he may live securely, • • • that he may possess in the best sense his natural right to existence, and to the fruits of his industry. • • • its end is that mind and body may unimpeded perform their functions, that every one may enjoy the free use of his reason, and that hatred, anger, deceit, and strife should cease from among its members."*[3]

When the framers of the Constitution assembled in Philadelphia in 1787, it was their purpose "to form a more perfect union" by removing the sources of economic dis-

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(1) Figures compiled from Senate Document No. 209, 57th Cong., 2d Sess. (1903); Yellen, *Violence in Labor Disputes* (1936); Adamic, *Dynamite* (Rev. ed., 1934).

(2) Federal troops had to intervene in West Virginia on 3 distinct occasions in the two years 1920 and 1921. Witte, *op. cit. supra*, page 178.

(3) Spinoza, *Tractus Theologico-Politicus* (Trübner & Co., London 1862) p. 344.

content which had revealed the Articles of Confederation as an instrument of disunion. During the years preceding the Convention, economic grievances had flared forth in the guise of armed struggles between militiamen and civilians. Federal troops had had to be summoned to subdue Shays and his Coxey's army of debtors,[1] and interminable tariff warfare between the states made impossible anything approximating a free flow of commerce. An interstate commerce convention had been called at Annapolis in 1786 to consider implementing the almost powerless central government but delegates from so few states attended that it broke up without accomplishment. From the failure of this abortive interstate commerce gathering, however, stemmed the call to the Constitutional Convention.[2]

Thus the desire for a strong central control of commerce accounts in large part for the existence of the American Constitution. Mindful of the ills that impelled them to Philadelphia, the framers delegated to Congress the power "to regulate commerce with foreign nations and among the several states." [3] Congress was also given the power to call forth the militia to execute the laws of the Union and to suppress insurrections (Art. I, Sec. 8) and the

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[1] McLaughlin, *The Confederation and the Constitution* (1905), pp. 154-167.

[2] McLaughlin, *id.*, pp. 180-182.

[3] The understanding which the Americans of the Constitutional era had of the powers and duties of the federal government is revealed by their actions at the time. It is not without significance that the outstanding ratification celebration was a victory parade of manufacturers, whose expectations from the national legislature were graphically symbolized by the legend adopted by the calico printers for their float: "May the Union Government protect the Manufacturers of America" (*Pennsylvania Gazette*, July 9, 1788). Their view of the all embracing nature of federal

power, upon application by a state, to protect that state against domestic violence (Art. IV, Sec. 4).

The contention that the Act here challenged transcends the power of Congress raises a question which searches out the fundamental theory underlying our entire governmental system: Is the role which the national government is called upon to play by the Constitution confined solely to intervention after open hostilities in industrial warfare have commenced? Or may it exercise its powers to prevent the necessity of forceful suppression from arising? In terms of the health of the nation, must it wait to intervene until an epidemic of violence and waste has broken out or may it adopt the technique of preventive medicine and prescribe an industrial vaccine?

A Proper Regulation.

> *"Society is under an obligation to provide some alternative to this trial by battle, and to make some remedies available for the civilized appeal to reason, instead of the primitive recourse to arms."*(1)

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power seems to have been shared by Alexander Hamilton, the first Secretary of the Treasury, for in one of his early reports to Congress, he urged the granting of subsidies to individual industrial enterprises, apparently hoping so to promote the general welfare. (Bowers, *Jefferson and Hamilton* (1935), p. 161). Congress, as well, appears to have deemed its power plenary, seriously debating, on grounds of policy, whether to accede to the request of a glass blower named Amelung, who sought a national subsidy for his plant. (2 *Annals of Congress* 1630 (June, 1790).) Layman, lawyer, and legislator alike felt that the Convention had achieved its declared purpose of rendering "the federal constitution adequate to the exigencies of government, and the preservation of the union." *Journals of Congress*, Feb. 21, 1787.

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(1) H. W. Ballantine, *Evolution of Legal Remedies as a Substitute for Violence and Strikes*, in Annals of American Academy of Political and Social Science, Jan. 1917, p. 147.

The federal government, confronted by this omnipresent and ever increasing warfare, soon decided that it could not adequately protect interstate commerce by the use of brute force after the fact. To eradicate evils it is necessary to inquire into and remove their causes. With the rise of collective action on the part of labor, made necessary by the modern industrial system, Congress soon learned, and was again and again reminded, that if anarchy in industrial relations was to end, it was imperative, on the one hand, that workers be encouraged to associate for the advancement of their mutual interests and to bargain collectively through freely chosen representatives and, on the other hand, that employers be induced to refrain from interfering with the organization of labor and to accept and adopt the procedure of collective bargaining.

1895: The Commission to investigate the violent Pullman strike observes:

> "The growth of corporate power and wealth has been the marvel of the past 50 years. It will not be surprising if the marvel of the next 50 years be the advancement of labor to a position of like power and responsibility. We have heretofore encouraged the one and comparatively neglected the other. Does not wisdom demand that each be encouraged to prosper legitimately and to grow into harmonious relations of equal standing and responsibility before the law?"[1]

1902: The Commission of 1898 formed to investigate industrial strife (30 Stat. 476) reports:

> "Most strikes and lockouts would not occur if each party understood exactly the position of the

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[1] *Report on the Chicago Strike of June-July*, 1894, by the United States Strike Commission of 1894-1895 on the Pullman Strike, p. 43.

other. Where representatives of employers and employees can meet personally together and discuss all the considerations on which the wage scale and the conditions of labor should be based, a satisfactory agreement can, in the great majority of instances, be reached. It is not to be supposed that the introduction of joint conferences and arbitration committees in a trade will render strikes and lockouts thereafter impossible. * * * Nevertheless experience both in England and in our own country shows that where these practices have once become fairly well established they greatly reduce the number of strikes and lockouts, and in many trades do away with them altogether for long periods of time. Even when a cessation of employment does intervene, the experience of the beneficial effects of peaceful methods usually leads to their reestablishment."[1]

1903: The Anthracite Coal Commission declares:

"The question of the recognition of the union and of dealing with the mine workers through their union, was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike."[2]

The Commission finds that:

"a plan, under which all questions of difference between the employer and his employees, shall first be considered in conference between the employer or his official representative and a committee, chosen by his employees from their own ranks is most likely to

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[1] *Final Report of Industrial Commission* (1902) Vol. 19, pp. 844-845.

[2] *Report of Anthracite Coal Strike Commission* (1903) Senate Doc. No. 6, 58th Cong. Special Sess., p. 61.

produce satisfactory results and harmonious relations, and at such conference the employees should have the right to call to their assistance such representatives or agents as they may chose, and to have them recognized as such."[1]

1916: The Commission on Industrial Relations states:

"The fundamental question for the Nation to decide, for in the end public opinion will control here as elsewhere, is whether the workers shall have an effective means of adjusting their grievances, improving their condition, and securing their liberty, through negotiation with their employers, or whether they shall be driven by necessity and oppression to the extreme of revolt. Where men are well organized, and the power of employers and employees is fairly well balanced, agreements are nearly always reached by negotiations".

The Commission concludes:

"As a result, therefore, not only of fundamental considerations but of practical investigations, it would appear that every means should be used to extend and strengthen organizations throughout the entire industrial field."[2]

1920: The Industrial Conference convened by President Wilson to consider the causes of industrial unrest and to advise methods of solution reports:

"Employees need an established channel of expression and an opportunity for responsible con-

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[1] *Report of Anthracite Coal Strike Commission* (1903) Senate Doc. No. 6, 58th Cong., Special Sess., p. 62.

[2] *Final Report of Commission of Industrial Relations* (1916) Senate Doc. No. 415, 64th Cong., 1st Sess., Vol. 1, pp. 64-68.

> sultation on matters which affect them in their relations with their employers and their work. . . . Representatives must be selected by the employees with absolute freedom. . . . All employees must feel absolutely convinced that the management will not discriminate against them in any way because of activities in connection with shop committees."[1]

Knowing these things, knowing that the denial by employers of the right of employees to organize and the refusal by employers to accept the system of collective bargaining, has been one of the major causes of strikes stultifying commerce[2] and has been largely responsible for the havoc and chaos in industrial relations, Congress has made constant efforts to protect the right of employees to organize themselves for collective action.

The attempts of the federal government to adjust differences and reduce hostilities in the fundamental conflict between labor and capital for a fair division of the wealth have been many and varied.[3] The Secretary of Labor was given power to act as mediator in labor disputes.[4] Attempts were made to fix the actual terms of the employment contract.[5] Efforts were exerted to have disputants

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[1] *Report of Industrial Conference*, 1920, pp. 9-11.

[2] An analysis of strikes and lockouts in the United States classified by major issues involved is contained in Bulletin No. 1 of the National Labor Relations Board, Division of Economic Research, August, 1936, pp. 105-106. See also Table appended to brief for the National Labor Relations Board in the instant case (p. 144).

[3] An excellent history of intervention by the federal government in labor relations and labor disputes is contained in Bulletin No. 1 of the National Labor Relations Board, Division of Economic Research, August, 1936, pp. 33-50.

[4] 37 Stat. 738.

[5] See *Wilson* v. *New*, 243 U. S. 332.

accept the awards of a Labor Board which had behind it only the sanction of public opinion.[1] A National Labor Board, which acted as a mediation and fact finding agency, was created.[2] None of these methods worked.

Notably successful in the field of labor disputes, however, was the National War Labor Board. With the endorsement of a united country, the Board enunciated the policy that "the right of workers to organize into trade unions and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged or interfered with by the employers in any manner whatsoever."[3] The soundness of this policy was demonstrated by the outstanding accomplishments of the Board.[4] After a period of experimentation in the field of railroad labor disputes,[5] the Railway Labor Act was adopted.[6] Interference with organizational activities of employees was enjoined and collective bargaining with freely chosen representatives of a majority of any class of

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[1] Title III, Transportation Act of 1920, 41 Stat. 456.

[2] This Board was created under the National Industrial Recovery Act (48 Stat. 198) to handle labor disputes arising under the codes.

[3] *National War Labor Board, Principles and Rules of Procedure* (1919), p. 4.

[4] See Watkin, *Labor Problems and Labor Administration in the United States during the World War*, University of Illinois Studies in the Social Sciences, Vol. VIII, No. 3.

[5] See Witte, *The Government in Labor Disputes* (1932), pp. 238-245; *Labor and the Government*, Twentieth Century Fund (1935) pp. 173 *et seq.*

[6] 44 Stat. 577, as amended by 48 Stat. 1185.

employees required. Interstate commerce is no longer strangled by national railroad strikes.[1]

In 1935, Congress, reviewing and summarizing the lessons of history, found:

> "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce" (National Labor Relations Act, Sec. 1).

Examining its previous attempts to eliminate trial by battle in industrial affairs, Congress concluded:

> "Experience has proved that protection by law of the rights of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees" (*ibid.*).

To protect these rights of employees and thus to insure a free and unimpeded flow of commerce among the states,

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[1] See First and Second *Annual Reports* of National Mediation Board. A summary account of the excellent conditions prevailing in those industries in which the procedure of collective bargaining has been adopted is contained in Bulletin No. 1 of the National Labor Relations Board Division of Economic Research, August, 1936, pp. 17-31.

Congress provided the machinery of the National Labor Relations Act for the amicable, speedy and impartial adjustment of labor disputes. A distinct product of trial and error, resting on a sound pragmatic and empirical basis, the act contains no novel philosophy, no strange economic theory, no *a priori* principles.

Thirty-five years ago the Industrial Commission issued a national warning:

> "If the working people are prevented from introducing an element of democracy into industrial life by way of labor organizations, they will undertake to introduce it in another way."[1]

The National Labor Relations Act recognizes the truth, so painfully and expensively taught, that only by economic democracy can economic peace be attained.

POINT II.

The National Labor Relations Act does not deprive any person of life, liberty or property without due process of law.

> "The inquiry must be whether considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."[2]

There can be no doubt but that the impact of industrial warfare on interstate commerce necessitated Congressional action if the channels of that commerce were to be free of

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[1] *Final Report of the Industrial Commission* (1902), Vol. 19, p. 805.

[2] *Purity Extract & T. Co.* v. *Lynch*, 226 U. S. 192, 204 (1912).

increasing obstructions. Thus, the end of the National Labor Relations Act is within the competence of Congress to attain. And it is clear that the means selected by Congress have a real and substantial relation to this legitimate object.

In terms of the current constitutional test of what constitutes "due process of law"[1] one question remains: Are the means arbitrary, capricious and unreasonable?

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[1] There is little doubt that as used in the Fifth Amendment, the phrase "due process of law" was understood to mean process in the sense of legal procedure, was "intended to convey the same meaning as the words 'by the law of the land' in Magna Charta." (*Den* v. *Hoboken Land & Improvement Co.*, 18 How. 277 (1855).) And, both as to the Fifth and the Fourteenth Amendments, it was so interpreted by this court.

> "It is not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal Government, for nearly a century, and while, during all that time, the manner in which the powers of that Government have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its branches, this special limitation upon its powers has rarely been invoked in the judicial forum or the more enlarged theater of public discussion. But while it has been a part of the Constitution, as a restraint upon the power of the States, only a very few years, the docket of this court is crowded with cases in which we are asked to hold that State Courts and State Legislatures have deprived their own citizens of life, liberty or property without due process of law. There is here abundant evidence that there exists some strange misconception of the scope of this provision as found in the XIVth Amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State Court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded. . . .
>
> "But, however, this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that where by the laws of the State

It has been shown that rational grounds support the legislative determination which is embodied in the Act. These rational grounds commended themselves to the overwhelming majority of the law makers who passed upon the Act.

63 senators, of whom 47 were lawyers, voted in favor of the bill, while only 12 senators, of whom 7 were lawyers, voted against it.[1] This Senate vote, translated, shows an overwhelming popular majority in favor of the Act:

90,476,084—for
8,295,115—against
22,712,162—not voting.

The House of Representatives, containing at least 265 lawyers (61%), passed the bill without a record vote.[2] In neither body of Congress was any constitutional objection

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the party aggrieved has, as regards the issues affecting his property, a fair trial in a court of justice, according to the modes of proceeding applicable to such case that he has been deprived of that property without due process of law." (*Davidson* v. *Board of Admrs. of New Orleans*, 96 U. S. 97 (1877).

To be sure, for approximately a half a century, the words "due process of law" have been applied to effect substantive as well as procedural rights. Yet, it must be clear that the present construction of this phrase bears slight resemblance to that initially accorded it.

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[1] Congressional Record, 74th Cong., 1st Sess., Vol. 7, Part 7, p. 7681; Congressional Digest, 74th Cong., 1st Sess. The bill was favorably reported by the Senate Committee on Education and Labor (Senate Report No. 573, 74th Cong., 1st Sess.), 8 of the 22 members of which were lawyers (Congressional Digest, *supra*).

[2] *New York Times*, June 20, 1935, page 1; Congressional Digest, *id.* The bill was favorably reported by the House Committee on Labor (H. Rep., No. 1147, 74th Cong., 1st Sess.), 6 of the 12 members of which were lawyers (Congressional Digest, *supra*).

to the statute urged. See *Old Dearborn Distrib. Co.* v. *Seagram-Distillers Corp.*, 81 L. Ed. 130, 134 (1937).

There is thus a great preponderance of opinion—lay and legal—which may be adduced in support of the proposition that the Act is neither arbitrary nor capricious. To hold it repugnant to the Fifth Amendment would be to declare that these hundreds of law makers and millions of citizens lacked any rational basis for what was undubitably their considered judgment.[1] Their opinion, without more, would seem sufficient proof that the statute is not arbitrary and capricious beyond a reasonable doubt. And that all doubts must be resolved in favor of the validity of legislation is a fundamental canon of constitutional construction.[2]

> *"The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed * * * Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife.*[3]

Congress has found that, in the public interest, it is essential to enforce freedom of association for the purpose of negotiating the terms upon which labor is willing to sell its services to the end that there may be peace instead of war in matters affecting interstate commerce. It has declared that employees shall have the right to "self organ-

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[1] The Act was extensively considered by Congress for two years. See brief of National Labor Relations Board in the instant case, page 69, note 32.

[2] *McCullough* v. *Maryland*, 4 Wheat. 316, 421 (1819); *Sweet* v. *Rechel*, 159 U. S. 380, 392 (1895).

[3] *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570.

ization, to form, join or assist labor organizations * * * and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection" (Sec. 7).

The protection of these rights is not a new or unusual principle but one which has been developed by experience, statute and decision over a long period of years. The Act merely gives further legislative recognition to the principle that employees have a right entitled to judicial protection in being able to act or to have a representative act for them free from the coercive influences of an employer.

The Act declares that it shall be an unfair labor practice for an employer "by discrimination with regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization" [Sec. 8(3)] and provides that the Board may order an employer "to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act" [Sec. 10(c)].

This is wholly logical and reasonable. To be subject to discharge because of self-organization activity is to be entirely deprived of the right of self-organization. Of what conceivable use is the right to act collectively if the attempted assertion of that right can be ruthlessly crushed at the start? If employees have the right to organize and designate representatives and to bargain collectively, then obviously the employer is under a correlative duty to refrain from interfering with or restraining or coercing employees in the exercise of such right. The economic power of the employer is conditioned so that it does not impinge on the recognized right of the employee. This

restriction on the employer in no way curtails the normal exercise of his power to hire or fire—the employee may be discharged for any other reason, however capricious—but is merely directed at its abuse for the purpose of interfering with collective action.

Reinstatement, with back pay, of an employee discharged in violation of a law, must be required if the law is to have any meaning. Surely, its editorial employees are as much entitled to protection against the unfair labor practices of the petitioner as the petitioner is entitled to protection against the unfair trade practices of a competitor.[1] In each case, there is a property interest involved. *Texas & New Orleans Rd. Co.* v. *Brotherhood*, 281 U. S. 548, and *Associated Press* v. *International News*, 248 U. S. 215.

POINT III.

The National Labor Relations Act as applied to petitioner does not abridge the freedom of the press.

Petitioner concedes, as of course, it must, that the Act contains no restrictions whatever on its freedom to publish what it pleases free from Government blue-penciling or previous Government permission. See *Patterson* v. *Colorado*, 205 U. S. 454; *Near* v. *Minnesota*, 283 U. S. 697. However, petitioner contends, Watson has exhibited a prejudice

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[1] In 1916 the Commission on Industrial Relations recommended that the Federal Trade Commission in determining unfair methods of competition "specifically investigate the unfair treatment of labor in all respects, with particular reference to the following points: (a) Refusal to permit employees to become members of labor organizations; (b) Refusal to meet or confer with the authorized representatives of employees." Report of Commission of Industrial Relations (1916) Senate Doc. No. 415, 64th Cong., 1st Sess., Vol. 1, p. 68.

in favor of the rights of labor. If Watson is reemployed, those prejudices will filter into the news, for the author and the product are "one and inseparable" (Brief, p. 102). Since "freedom of expression must be jealously protected" (Brief, p. 100), Congress is impotent to prevent industrial disturbances in the newspaper industry.

This argument confuses freedom of the press with integrity of the news. The Constitution does not guarantee the objectivity of the press, nor is objectivity attainable in a subjective world. The question really raised by petitioner is not whether news shall be unprejudiced but rather whose prejudices shall color the news. And it should be noted that petitioner, under the Act, as before, remains the complete master of its business. Its prejudices are still supreme. Under the Act, as before, petitioner may, in its news releases, give full play to its declared prejudice against the organization of workers for the betterment of their living standards. Moreover, petitioner is still in undisputed possession of the ultimate blue pencil. If an employee exhibits a bias in reporting news events which is distasteful to petitioner, petitioner may reject his work, may alter it or may discharge the offending employee. The privilege which petitioner demands "to print the news it wants to as it wants to" (Pet. for Certiorari, p. 19) remains wholly unimpaired.

Further, it should be observed, that Watson was actively associated with the Guild for two years prior to his discharge. It was not and could not be suggested that there was any bias in his handling of the news. The charter of the Guild, of which Watson was one of the founders, states that it is the purpose of the Guild *inter alia*, "to raise the standards of journalism by promoting

accuracy, thoroughness, and impartiality in reporting, writing and editing news" (Bd. Ex. 20, R. 451). A majority of the editorial employees in petitioner's New York office are Guild members (R. 239). To whom can petitioner point and accuse of bias in the treatment of news?

Far from violating the guarantee of freedom of the press, the National Labor Relations Act attempts to remove a significant barrier to the free circulation of facts and opinions. Conflicts between newspaper employers and newspaper employees have repeatedly threatened the very existence of large parts of the press.[1] They have precipitated newspapers into receiverships;[2] they have caused newspaper plants to be shut down for extensive periods.[3] And it cannot be doubted that interruption of the operations of press associations would seriously affect virtually every newspaper in the land. A glance at any morning newspaper will demonstrate forcibly how little front-page news would remain if press association items were removed (See Guild Exhibits 1-10, R. 416).

Non-action of a governmental agency may be far more destructive of a fundamental guarantee than positive legis-

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[1] Bd. Exh. 13 (R. 341) lists the strikes and lockouts in the newspaper industry in 1934 and January to July, 1935.

[2] Strikes of editorial employees on the *Newark Ledger* and the *Amsterdam News* caused by a refusal of the employers to bargain collectively, forced these newspapers into receivership (R. 261-263).

[3] To cite a recent instance: the strike of editorial employees against the *Seattle Post-Intelligencer*, caused by interference with organizational activities, forced suspension of publication of the paper (for the first time in sixty years) from August 13, 1936 to November 30, 1936. *The Guild Reporter*, Dec. 1, 1936, p. 1. A boycott against and refusal of transportation workers to handle other Hearst publications definitely interfered with interstate commerce. *Ibid.*, Sept. 15, 1936, p. 4.

lation. Congress is forbidden to abridge the freedom of the press. It is not commanded to remain inert before an evil which threatens of itself to nullify that freedom. Steps taken to assure a flow of news unimpeded by strikes and lock-outs with their concomitant violence and disruption cannot be held repugnant to a constitutional mandate designed to assure that free transmission of facts and ideas in which liberty of thought begins.

Conclusion.

The order of the court below should be affirmed.

February 4, 1937.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 365.—October Term, 1936.

The Associated Press, Petitioner, vs. National Labor Relations Board. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 12, 1937.]

Mr. Justice Roberts delivered the opinion of the Court.

In this case we are to decide whether the National Labor Relations Act,[1] as applied to the petitioner by an order of the National Labor Relations Board, exceeds the power of Congress to regulate commerce pursuant to Article I, Section 8, abridges the freedom of the press guaranteed by the First Amendment, and denies trial by jury in violation of the Seventh Amendment of the Constitution.

In October 1935 the petitioner discharged Morris Watson, an employe in its New York office. The American Newspaper Guild, a labor organization, filed a charge with the Board alleging that Watson's discharge was in violation of Section 7 of the National Labor Relations Act which confers on employes the right to organize, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; that the petitioner had engaged in unfair labor practices contrary to subsections (1) and (3) of Section 8 by interfering with, restraining or coercing Watson in the exercise of the rights guaranteed him by Section 7 and by discriminating against him in respect of his tenure of employment and discouraging his membership in a labor organization. The Board served a complaint upon the petitioner charging unfair labor practices affecting commerce within the meaning of the statute. The petitioner answered admitting Watson's discharge but denying that it was due to his joining or assisting the Guild or engaging

[1] July 5, 1935, c. 372; 49 Stat. 449; U. S. C. Supp. I, Tit. 29, §§ 151, etc. The terms of the act, the procedure thereunder, and the relief which may be granted pursuant thereto, are set forth in the opinion in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419.

in union activities, and denying, on constitutional grounds, the validity of the act and the jurisdiction of the Board.

At a hearing before a trial examiner the petitioner appeared specially and moved to dismiss the complaint on constitutional grounds. The motion was overruled on all grounds except upon the question whether the proceeding was within the federal commerce power. Counsel thereupon withdrew from the hearing and the matter was further heard without the participation of the petitioner or its counsel. After receiving voluminous evidence as to the character of the petitioner's business the examiner overruled the contention that interstate commerce was not involved and proceeded to hear the merits. At the close of the hearing he recommended that an order be entered against the petitioner. Notice of the filing of this report and of hearing thereon by the Board was given the petitioner but it failed to appear. Based upon the examiner's report the Board made findings of fact, stated its conclusions of law, and entered an order that the Associated Press cease and desist from discouraging membership in the American Newspaper Guild or any other labor organization of its employes, by discharging, threatening to discharge, or refusing to reinstate any of them for joining the Guild or any other labor organization of its employes, and from discriminating against any employe in respect of hire or tenure of employment or any term or condition of employment for joining the Guild or any other such organization, and from interfering with, restraining, or coercing its employes in the exercise of the rights guaranteed in Section 7 of the act. It further enjoined the Associated Press to offer Watson reinstatement to his former position without prejudice to any rights and privileges previously enjoyed by him; to make him whole for any loss of pay suffered by reason of his discharge; to post notices in its New York office stating it would cease and desist from the enjoined practices, and to keep such notices posted for thirty days.[2]

The petitioner refused to comply with the order and the Board, pursuant to Section 10 (e) of the act, petitioned the Circuit Court of Appeals for enforcement. The petitioner answered again setting up its contentions with respect to the constitutionality of the act as applied to it. After argument, the court made a decree enforcing the order.[3]

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[2] 1 N. L. R. B. 788.
[3] 85 F. (2d) 56.

In its answer to the Board's petition for enforcement the petitioner did not challenge the Board's findings of fact and no error is assigned in this court to the action of the Circuit Court of Appeals in adopting them. We, therefore, accept as established that the Associated Press did not, as claimed in its answer before the Board, discharge Watson because of unsatisfactory service but, on the contrary, as found by the Board, discharged him for his activities in connection with the Newspaper Guild. It follows that Section 8, subsections (1) and (3) authorize the order and the only issues open here are those involving the power of Congress under the Constitution to empower the Board to make it in the circumstances.

First. Does the statute, as applied to the petitioner, exceed the power of Congress to regulate interstate commerce? The solution of this issue depends upon the nature of the petitioner's activities, and Watson's relation to them. The findings of the Board in this aspect are unchallenged and the question becomes, therefore, solely one of law to be answered in the light of the uncontradicted facts.

The Associated Press is a membership corporation under the laws of New York which does not operate for profit but is a cooperative organization whose members are representatives of newspapers. It has about 1350 members in the United States and practically all the newspapers represented in its membership are conducted for profit. Its business is the collection of news from members and from other sources throughout the United States and foreign countries and the compilation, formulation, and distribution thereof to its members. In the process the news is prepared for members' use by editing, rewriting, selecting, or discarding the information received in whole or in part. The product is transmitted to member newspapers and also to foreign agencies pursuant to mutual exchange agreements. The service is not sold but the entire cost is apportioned amongst the members by assessment.

Petitioner maintains its principal office in New York City but has also division points scattered over the United States each of which is charged with the duty of collecting information from a defined territory and preparing and distributing it to newspapers within the assigned area and to other division points for use within their respective areas. Each member newspaper forwards news deemed important to the divisional headquarters of its area. In addition, employes of the petitioner obtain news which is transmitted to the appropriate division headquarters to be edited and

forwarded to members within the area represented by that headquarters and to other divisions for distribution to member newspapers within their respective areas. The means of communication commonly used in receiving and transmitting news consists of wires leased from telegraph and telephone companies but messenger service, the wireless, and the mail are also employed. Each division point is connected with every other by telegraph wires for exchange of news. Regional circuits supplement these primary circuits. All these lines of communication are utilized throughout the twenty-four hours of every day.

Consideration of the relation of Watson's activities to interstate commerce may be confined to the operations of the New York office where he was employed. This office is the headquarters of the Eastern Division and, through it operates the petitioner's foreign service, with offices, staffs, and correspondents throughout the world. News received in New York from foreign parts, from newspaper members within the Eastern Division, and from other division points, is edited by employes acting under the direction of supervising editors and, in its edited form, is transmitted throughout the division and to the headquarters of other divisions. The distributees of any given item are selected by those employed for the purpose in accordance with their judgment as to the usefulness of that item to the members or the divisions to which it is transmitted. Thus the New York office receives and dispatches news from and to all parts of the world in addition to that from New York State and other northeastern and Middle Atlantic States which comprise the Eastern Division. The work of the office is divided into two departments known as the Traffic Department and the News Department. All those employed in the actual receipt and transmission of news are in the Traffic Department; all others, including editorial employes, are grouped in the News Department. Watson, at the time of his discharge was in the latter class, whose duty is to receive, rewrite, and file for transmission news coming into the office. An executive news editor, assisted by supervising editors and editorial employes, has general charge of the revision of news received from so-called filing editors who are in immediate charge of the telegraph wires connecting with the sources and destination of news. These filing editors supervise the news as it goes out from New York City; they determine what news, from the total copy delivered to them, is to be sent over the wires of which they have charge to

the area reached by those wires and they have charge of rewriting such copy as it comes from the other editors as may be appropriate for use in their respective circuits and the delivery of the selected and rewritten news to teletype operators for transmission over their wires. The function of editors and editorial employes such as Watson is to determine the news value of items received and speedily and accurately to rewrite the copy delivered to them, so that the rewritten matter shall be delivered to the various filing editors who are responsible for its transmission, if appropriate, to the areas reached by their circuits.

Upon the basis of these facts the Board concluded that the Associated Press was engaged in interstate commerce; that Watson's services bore a direct relation to petitioner's interstate commerce activities; and that labor disputes between petitioner and employes of his class and labor disturbances or strikes affecting that class of employes tend to hinder and impede interstate commerce. These conclusions are challenged by the petitioner.

Section 2 (6) of the Act defines the term "commerce" as meaning "trade, traffic, commerce, transportation, or communication among the several States . . . or between any foreign country and any State . . . ." Subsection (7) provides: "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce."

The Associated Press is engaged in interstate commerce within the definition of the statute and the meaning of Article I, Section 8 of the Constitution. It is an instrumentality set up by constituent members who are engaged in a commercial business for profit, and as such instrumentality acts as an exchange or clearing house of news as between the respective members and as a supplier to members of news gathered through its own domestic and foreign activities. These operations involve the constant use of channels of interstate and foreign communication. They amount to commercial intercourse and such intercourse is commerce within the meaning of the Constitution.[4] Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution.[5] This con-

[4] *Gibbons* v. *Ogden*, 9 Wheat. 1, 189.

[5] *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9, 10; *Federal Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266, 279; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 107; *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 276.

clusion is unaffected by the fact that the petitioner does not sell news and does not operate for profit,[6] or that technically the title to the news remains in the petitioner during interstate transmission.[7] Petitioner being so engaged in interstate commerce the Congress may adopt appropriate regulations of its activities for the protection and advancement and for the insurance of the safety of such commerce.

The National Labor Relations Act seeks to protect the employes' right of collective bargaining and prohibits acts of the employer discriminating against employes for union activities and advocacy of such bargaining by denominating them unfair practices to be abated in accordance with the terms of the act. As is shown in the opinion in *Virginian Ry. Co.* v. *System Federation No. 40*, No. 324, October Term, 1936, the experience under the Railway Labor Act has demonstrated the efficacy of such legislation in preventing industrial strikes and obviating interference with the flow of interstate commerce. The petitioner, however, insists that editorial employes such as Watson are remote from any interstate activity and their employment and tenure can have no direct or intimate relation with the course of interstate commerce. We think, however, it is obvious that strikes or labor disturbances amongst this class of employes would have as direct an effect upon the activities of the petitioner as similar disturbances amonst those who operate the teletype machines or as a strike amongst the employes of telegraph lines over which petitioner's messages travel.

In *Texas & N. O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 570, we held a statute protecting the rights of collective bargaining by railway employes was within the competence of Congress under the commerce clause and that its provisions extended to clerks who had no direct contact with the actual facilities of railway transportation. We there said:

"Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard

[6] *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465.

[7] *The Pipe Line Cases*, 234 U. S. 548, 560.

their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife."

In *The Virginian Railway Co.* v. *System Federation No. 40*, No. 324, October Term, 1936, we have held an amendment of the Railway Labor Act, in all material respects analogous to the statute here under consideration, applicable to so-called back-shop employes of railroads despite the contention that their employment is remote from interstate transportation.

These decisions foreclose the petitioner's contention that Watson's employment had no relation to interstate commerce and could not be subjected to the regulatory provisions of the National Labor Relations Act.

Second. Does the statute, as applied to the petitioner, abridge the freedom of speech or of the press safeguarded by the First Amendment? We hold that it does not. It is insisted that the Associated Press is in substance the press itself, that the membership consists solely of persons who own and operate newspapers, that the news is gathered solely for publication in the newspapers of members. Stress is laid upon the facts that this membership consists of persons of every conceivable political, economic, and religious view, that the one thing upon which the members are united is that the Associated Press shall be wholly free from partisan activity or the expression of opinions, that it shall limit its function to reporting events without bias in order that the citizens of our country, if given the facts, may be able to form their own opinions respecting them. The conclusion which the petitioner draws is that whatever may be the case with respect to employes in its mechanical departments it must have absolute and unrestricted freedom to employ and to discharge those who, like Watson, edit the news, that there must not be the slightest opportunity for any bias or prejudice personally entertained by an editorial employe to color or to distort what he writes, and that the Associated Press cannot be free to furnish unbiased and impartial news reports unless it is equally free to determine for itself the partiality or bias of editorial em-

ployes. So it is said that any regulation protective of union activities, or the right collectively to bargain on the part of such employes, is necessarily an invalid invasion of the freedom of the press.

We think the contention not only has no relevance to the circumstances of the instant case but is an unsound generalization. The ostensible reason for Watson's discharge, as embodied in the records of the petitioner, is "solely on the grounds of his work not being on a basis for which he has shown capability". The petitioner did not assert and does not now claim that he had shown bias in the past. It does not claim that by reason of his connection with the union he will be likely, as the petitioner honestly believes, to show bias in the future. The actual reason for his discharge, as shown by the unattacked finding of the Board, was his Guild activity and his agitation for collective bargaining. The statute does not preclude a discharge on the ostensible grounds for the petitioner's action; it forbids discharge for what has been found to be the real motive of the petitioner. These considerations answer the suggestion that if the petitioner believed its policy of impartiality was likely to be subverted by Watson's continued service, Congress was without power to interdict his discharge. No such question is here for decision. Neither before the Board, nor in the court below nor here has the petitioner professed such belief. It seeks to bar all regulation by contending that regulation in a situation not presented would be invalid. Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances.

The act does not compel the petitioner to employ anyone; it does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice. The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employes. The restoration of Watson to his former position in no sense guarantees his continuance in petitioner's employ. The petitioner is at liberty, whenever occasion may arise, to exercise its undoubted right to sever his relationship for any cause that seems to it proper save only as a punishment for, or discouragement of, such activities as the act declares permissible.

The business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a

newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others. He must answer for libel.[8] He may be punished for contempt of court.[9] He is subject to the anti-trust laws.[10] Like others he must pay equitable and nondiscriminatory taxes on his business.[11] The regulation here in question has no relation whatever to the impartial distribution of news. The order of the Board in nowise circumscribes the full freedom and liberty of the petitioner to publish the news as it desires it published or to enforce policies of its own choosing with respect to the editing and rewriting of news for publication, and the petitioner is free at any time to discharge Watson or any editorial employe who fails to comply with the policies it may adopt.

Third. The contentions that the act deprives the petitioner of property without due process, that the order of the Board deprives petitioner of the right to trial by jury, and that the act is invalid on its face because it seeks to regulate both interstate and intrastate commerce, are sufficiently answered in the opinion in *Texas and N. O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, *supra*, and in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419, decided this day, and need no further discussion here.

The judgment of the Circuit Court of Appeals is affirmed.

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[8] *Robertson* v. *Baldwin*, 165 U. S. 275, 281.

[9] *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402.

[10] *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, *supra*.

[11] *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250.

SUPREME COURT OF THE UNITED STATES.

No. 365.—October Term, 1936.

The Associated Press, Petitioner, vs. National Labor Relations Board. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 12, 1937.]

Mr. Justice Sutherland.

Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Butler and I think the judgment below should be reversed.

One of the points made in the court below, and assigned as error here is that the statute involved, as applied, abridges the freedom of the press in violation of the First Amendment.

The Associated Press is engaged in collecting, editing and distributing news to its members, publishers of some 1300 newspapers throughout the United States. These newspapers represent many diverse policies and many differences in point of view. It, obviously, is essential that the news furnished should not only be without suppression but that it should be, as far as possible, free from color, bias or distortion. Such is the long-established policy of the Associated Press. If the Congressional act here involved, upon its face or in its present application, abridges the freedom of petitioner to carry its policy into effect, the act to that extent falls under the condemnation of the First Amendment. We shall confine ourselves to that question, the gravity of which is evident; but we do not mean thereby to record our assent to all that has been said with regard to other questions in the case.

The first ten amendments to the Constitution safeguard the fundamental rights therein mentioned from every form of unpermitted federal legislation. The due process clause of the Fifth Amendment protects the person against deprivation of life, liberty or property except by due process of law. "Liberty" is a word of wide meaning, and, without more, would have included the various liberties guaranteed by the First Amendment. *De Jonge* v. *Oregon*, 299

U. S. —, — (January 4, 1937), and cases cited; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 243-245; *Near* v. *Minnesota*, 283 U. S. 697, 707; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535.

But the framers of the Bill of Rights, regarding certain liberties as so vital that legislative denial of them should be specifically foreclosed, provided by the First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The difference between the two amendments is an emphatic one and readily apparent. Deprivation of a liberty not embraced by the First Amendment, as for example the liberty of contract, is qualified by the phrase "without due process of law"; but those liberties enumerated in the First Amendment are guaranteed without qualification, the object and effect of which is to put them in a category apart and make them incapable of abridgment by any process of law. That this is inflexibly true of the clause in respect of religion and religious liberty cannot be doubted; and it is true of the other clauses save as they may be subject in some degree to rare and extreme exigencies such as, for example, a state of war. Legislation which contravenes the liberties of the First Amendment might not contravene liberties of another kind falling only within the terms of the Fifth Amendment. Thus, we have held that the governmental power of taxation, one of the least limitable of the powers, may not be exerted so as to abridge the freedom of the press (*Grosjean* v. *American Press Co., supra*), albeit the same tax might be entirely valid if challenged under the "liberty" guaranty of the Fifth Amendment, apart from those liberties embraced by the First. Compare *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467, 482-483.

No one can read the long history which records the stern and often bloody struggles by which these cardinal rights were secured, without realizing how necessary it is to preserve them against any infringement, however slight. For, as Mr. Justice Bradley said in *Boyd* v. *United States*, 116 U. S. 616, 635, "illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of

procedure. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*" "Experience should teach us", it was said in another case, "to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead* v. *United States,* (dissent), 277 U. S. 471, 479. A little water, trickling here and there through a dam, is a small matter in itself; but it may be a sinister menace to the security of the dam, which those living in the valley below will do well to heed.

The destruction or abridgment of a free press—which constitutes one of the most dependable avenues through which information of public and governmental activities may be transmitted to the people—would be an event so evil in its consequences that the least approach toward that end should be halted at the threshhold.

The grants of the Constitution always are to be read in the light of the restrictions. Thus, the exercise of the power to make laws on the subject of bankruptcies, the exercise of the war powers, of the power to tax, of the power to exclude aliens, or of the power to regulate commerce, is each subject to the qualified restrictions of the Fifth Amendment (*Louisville Bank* v. *Radford,* 295 U. S. 555, 589); as each, also, is subject, so far as appropriate, to the unqualified restrictions of the First. Congress has no power to regulate the relations of private employer and employee as an end in itself, but only if that be an appropriate and legitimate means to a constitutional end, which here is the regulation of interstate commerce. Assuming that the statute upon its face satisfies this test, does the present application of it satisfy the requirement that the freedom of the press shall not be abridged?

Freedom is not a mere intellectual abstraction; and it is not merely a word to adorn an oration upon occasions of patriotic rejoicing. It is an intensely practical reality, capable of concrete enjoyment in a multitude of ways day by day. When applied to the press, the term freedom is not to be narrowly confined; and it obviously means more than publication and circulation. If freedom of the press does not include the right to adopt and pursue a

policy without governmental restriction, it is a misnomer to call it freedom. And we may as well deny at once the right of the press freely to adopt a policy and pursue it, as to concede that right and deny the liberty to exercise an uncensored judgment in respect of the employment and discharge of the agents through whom the policy is to be effectuated.

In a matter of such concern, the judgment of Congress—or, still less, the judgment of an administrative censor—cannot, under the Constitution, be substituted for that of the press management in respect of the employment or discharge of employees engaged in editorial work. The good which might come to interstate commerce or the benefit which might result to a special group, however large, must give way to that higher good of all the people so plainly contemplated by the imperative requirement that "Congress shall make *no* law . . . abridging the freedom . . . of the press".

The present case illustrates the necessity for the enforcement of these principles. The board found, in effect, that the actual reason for Watson's discharge was his activity as a member of a labor organization in the furtherance of its aims. Accepting this as a true statement of the reason for the discharge, let us consider the question from the standpoint of that finding; although, as already indicated, we are of opinion that the constitutional immunity of the press does not permit any legislative restriction of the authority of a publisher, acting upon his own judgment, to discharge anyone engaged in the editorial service. Such a restriction of itself would be an abridgment of the freedom of the press no less than a law restricting the constitutional liberty of one to speak would be an abridgment of the freedom of speech.

For many years there has been contention between labor and capital. Labor has become highly organized in a wide effort to secure and preserve its rights. The daily news with respect to labor disputes is now of vast proportions; and clearly a considerable part of petitioner's editorial service must be devoted to that subject. Such news is not only of great public interest; but an unbiased version of it is of the utmost public concern. To give a group of employers on the one hand, or a labor organization on the other, power of control over such a service is obviously to endanger the fairness and accuracy of the service. Strong sympathy for or strong prejudice against a given cause or the efforts made to advance it has too

often led to suppression or coloration of unwelcome facts. It would seem to be an exercise of only reasonable prudence for an association engaged in part in supplying the public with fair and accurate factual information with respect to the contests between labor and capital, to see that those whose activities include that service are free from either extreme sympathy or extreme prejudice one way or the other. And it would be no answer to say that dealing with news of this character constitutes only a part of the duties of the editorial force. The interest of a juror, for example, in the result which excludes him from sitting in a case, may be small and the adverse effect upon his verdict by no means certain. Nevertheless, the party affected cannot be called upon to assume the hazard. In the present case, by a parity of reasoning, the hope of benefit to a cherished cause which may bias the editorial employee is a contingency the risk of which the press in the exercise of its unchallengable freedom under the Constitution may take or decline to take, without being subject to any form of legislative coercion.

What, then, are the facts here involved? Morris Watson was employed by petitioner first in 1928 as a reporter and rewrite editor in petitioner's Chicago office. In 1930, he was transferred to the New York office, and there served as editorial employee until his discharge on October 18, 1935. One of his duties was to rewrite and supervise the news received at the New York office and determine what portion of it should be sent to points outside. As the court already has pointed out, he had authority to determine the news value of items received and was required to speedily and accurately rewrite the copy delivered to him.

In November, 1933, Watson was instrumental in organizing the Associated Press Unit of the New York Newspaper Guild, a labor organization, constituting a part of the American Newspaper Guild; and he was, from the beginning, recognized as the outstanding union representative of the press associations. He served successively as chairman of the Associated Press Unit and as treasurer and secretary of the New York Guild, and at the time of his discharge was vice-president for wiring services of the American Guild. His guild activities were immediately objected to by petitioner; and thereafter, on numerous occasions, these activities were objected to by petitioner's executives and inducements were held out to him to abandon them. The findings of

the board disclose that Watson continued in various ways to promote the interests of the guild; and there is no doubt that his sympathies were strongly enlisted in support of the guild's policies, whether they clashed with the policies of petitioner or not. We do not question his right to assume and maintain that attitude. But, if petitioner concluded, as it well could have done, that its policy to preserve its news service free from color, bias or distortion was likely to be subverted by Watson's retention, what power has Congress to interfere in the face of the First Amendment?

And that question may not be determined by considering Watson only; for the power to compel his continuance in the service includes the power to compel the continuance of all guild members engaged in editorial work, with the result that the application of the statute here made, if carried to the logical extreme, would give opportunity for the guild to exercise a high degree of control over the character of the news service. Due regard for the constitutional guaranty requires that the publisher or agency of the publisher of news shall be free from restraint in respect of employment in the editorial force. And we are dealing here not with guild members employed in the mechanical or purely clerical work of the press but with those engaged as Watson was in its editorial work and having the power thereby to affect the execution of its policies.

An illustration may be helpful: The right to belong to a labor union is entitled to the shield of the law, but no more so than the right not to belong. Neither can be proscribed. So much must be true, or we do not live in a free land. Let us suppose the passage of a statute of like character with that under review, having the same objective, but to be effected by forbidding the discharge of employees on the ground not that they are but that they are not members of a labor association. Let us suppose further that a labor association is engaged in publishing an interstate-circulated journal devoted to furthering the interests of labor, and that members of its editorial staff, resigning their membership in the association, transfer their allegiance from the cause of the workingman to that of the employer. Can it be doubted that an order requiring the reinstatement of an editorial writer who had been discharged under these circumstances would abridge the freedom of the press guaranteed by the First Amendment?

And if that view of the amendment may be affirmed in the case of a publication issued for the purpose of advancing a particular cause, how can it be denied in the case of a press association organized to gather and edit the news fairly and without bias or distortion for the use of all causes? To hold that the press association must await a concrete instance of misinterpretation of the news before it can act is to compel it to experiment with a doubt when it regards certainty as essential.

The conclusion that the First Amendment is here infringed does not challenge the right of employees to organize, to bargain collectively with their employers about wages and other matters respecting employment, or to refuse to work except upon conditions they are willing to accept. Nor, the First Amendment aside, does it challenge the act in so far as it is an allowable regulation of interstate commerce. All affirmations in respect of these matters may be fully conceded without prejudice to our very definite view that the application of the act here has resulted in an unconstitutional abridgment of the freedom of the press.

Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship, freedom of speech and of the press, and the right as freemen peaceably to assemble and petition their government for a redress of grievances? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time.